

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

VOLUME 10 Of 20

UNITED STATES OF AMERICA

EP:13-CR-0370-DG

v.

EL PASO, TEXAS

MARCO ANTONIO DELGADO

September 13, 2016

STATEMENT OF FACTS

THE HONORABLE DAVID C. GUADERRAMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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KATHLEEN A. SUPNET, CSR

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1 (Open court. Jury not present.)

2 THE COURT: Ms. Kanof, you had some matters we need to
3 take up?

4 MS. KANOF: Yes, Your Honor.

5 Last night the Court filed in the E.C.F. system E.C.F.
6 Document 226, which was Exhibit Number 7 from the evidentiary
7 hearing from yesterday morning, and the government has -- was
8 able to access it and it has every exhibit and contained in
9 there is P.P.I., is protected personal information.

10 Mr. Gireud and his wife's personal 1040 with their
11 Social Security numbers --

12 THE COURT: Are you talking about that packet of --

13 MS. KANOF: Yes. That one document, the one that I
14 put in the envelope for this very purpose and so anybody in the
15 whole world that wants to steal their identities and their
16 Social Security number can. So we'd ask that it either be
17 redacted or removed from that exhibit on public display.

18 THE COURT: Okay. We'll do that.

19 THE COURTROOM DEPUTY: I'll have the docket clerk log
20 it, Judge.

21 THE COURT: Anything else?

22 MS. KANOF: No, that was it, Your Honor.

23 THE COURT: Okay. So we have issues with two jurors.
24 The one juror Rosanna Lara that very badly wanted not to serve
25 because she wanted to be home because her daughter was pregnant

1 and so wanted to be home to I guess take care of the child or
2 something like that. Apparently, that didn't work, so now she's
3 got a letter from the Mayor of Anthony that says that she is the
4 accountant for the City of Anthony, is the only person who can
5 prepare a budget. There are budget hearings and it would
6 absolutely destroy the City of Anthony if she's not there
7 working on their budget.

8 I'm tempted to set a hearing this afternoon and tell
9 the Mayor he can come down here, tell me all of this under oath
10 subject to penalties of perjury and let me hear why he only has
11 one human being that knows how to run that budget. What happens
12 when she's on vacation. What happens if she were to die? What
13 happens if she were to stay home with her daughter who's having
14 the child like she first told us, what would happen to the
15 budget then? So that's one.

16 The other is Juror Number 2, who spoke to Mr. Heidtman
17 and apparently is unhappy about serving as well.

18 And what was it that she told you?

19 COURTROOM SECURITY OFFICER HEIDTMAN: Your Honor, she
20 told me she was having problems with concentration. And she
21 advised, I asked about the concentration, she said that she
22 neglected to tell the Court that she also works a primary job
23 for the Texas Workforce and they just hired three people that
24 she was responsible for training, thus, her concentration was
25 not here. It was with those new employees she was supposed to

1 be training.

2 THE COURT: Ms. Lara, doesn't concern me as much,
3 because she's an alternate. Juror Number 2, my experience, I've
4 had three or four trials with jurors like that, and it seems
5 like in every single one of those, they did everything they
6 could to sabotage the proceedings, and so it's always dangerous
7 to proceed with jurors who are digging in their heels and
8 wanting to do that.

9 The law is pretty clear that if someone is being that
10 resistant to jury service, I can remove them and seat an
11 alternate. If I do that, I'm simply going to move Juror Number
12 2 to the Alternate Number 2 position and have her sit through
13 the entire trial. I am bothered by the fact that people don't
14 want to do their duty. And so I can move her off the primary
15 jury, so she can't affect it, put her in Alternate Number 2
16 position and she can sit through the trial, that way she's not
17 going to get what she wants by throwing her tantrum.

18 MS. KANOF: Would you replace her with Alternate
19 Number 1.

20 THE COURT: That's what the law requires that it be in
21 that record. So Alternate Number 1 would have to be seated and
22 Juror Number 2 would be moved to the back. And we don't -- I
23 mean, this is just us talking. We can bring in Juror 2 and see
24 if we can't encourage her do what she's supposed to do. If that
25 doesn't happen and we seat her -- because yesterday she was

1 visibly not engaging with the witnesses. And so if she
2 continues to do that, we can always replace her any time during
3 the proceeding.

4 So we can talk to her now or we can talk to her later.
5 We can bring her in, talk to her now, continue to watch her
6 demeanor during the proceeding, and we find that it's going to
7 be incongruent with what a reasonable juror should be doing, we
8 can then talk about replacing her with Alternate Number 1.

9 MS. KANOF: Your Honor, I think the team agrees that
10 you should talk to her now.

11 THE COURT: Okay.

12 Ms. Franco, did you want a moment to talk to
13 Mr. Hanshew?

14 MS. FRANCO: Well, that's what we're talking about
15 right no, Your Honor. It just seems -- I don't now how to say
16 this so that it's unrespectful, but it seems rather heavy-handed
17 to bring her in and talk to her right now. And I don't mean any
18 disrespect by that, but --

19 THE COURT: No, she's the one that's wanting to give
20 us this new information.

21 MS. FRANCO: Okay. I just -- I'm concerned about
22 moving her from the panel into the alternate slot, because I
23 think the problem is still going to be there, because the
24 alternates go to the jury room, and so the idea that she could
25 perhaps poison or pollute the rest of the pool is still there,

1 so I think --

2 THE COURT: The damage is done at deliberations, not
3 during the time. They're not talking about the case. The other
4 jurors know they're under instructions not to talk about the
5 case.

6 MS. FRANCO: Not supposed to.

7 THE COURT: The damage is done at deliberations. At
8 least that was my experience, those jurors just, you say this,
9 I'll say that; you say that, well, then I'll say this.

10 MS. FRANCO: Well, I'll leave it to the Court's
11 discretion as to what you think is obviously the right thing to
12 do. I'm just concerned that it might shut her down even more
13 so.

14 THE COURT: Well, I think -- she wants to talk to us,
15 right?

16 COURT SECURITY OFFICER HEIDTMAN: Yes, sir, she does.

17 THE COURT: So we can speak to her and hear her out
18 about this other job that she never told us anything about, even
19 though that was the whole point of the three hours of voir dire
20 yesterday, and let her vent a little bit and then we'll just
21 watch her during the rest of the trial and if we have to replace
22 her we will. So let's do that.

23 I don't need to bother you with this, sir. If you'd
24 like to go out and get a drink, we'll call you in from the
25 hallway once we are finished with this.

1 COURT SECURITY OFFICER HEIDTMAN: Ms. Valenzuela.

2 THE COURT: Venezuela, yes, sir. Valenzuela.

3 (Juror present.)

4 THE COURT: Good morning, Ms. Valenzuela. You are
5 Juror Number 2?

6 JUROR VALENZUELA: Yes, I am. Good morning.

7 THE COURT: Good morning. You wanted to address
8 something with us?

9 JUROR VALENZUELA: Yes. Thank you for giving me the
10 opportunity to explain my situation.

11 Yesterday, when you questioned me, I only mentioned my
12 part-time job because that was one of my worries. And I'm also
13 the director of Texas Workforce Commission. That's my full-time
14 job. I imagine that you have that information in my
15 questionnaire when I completed that information. I'm still
16 working there. My hope was when I found this job with community
17 college that I was going to resign from my full-time job, but I
18 haven't been able to do that because of extreme circumstances
19 that are occurring within my agency.

20 I retire -- and I'm sorry for making this story long.
21 I think you need to know the details. I didn't want to disclose
22 them, because they have to do with the way that the agency,
23 specifically hear in El Paso, operated.

24 I retired. I went to -- from the agency after
25 27 years, I went to get a Ph.D., and when I was graduating, they

1 called me back to the agency if I wanted to become the director.
2 And because they fired the director at that time and the
3 operations coordinator. So I went back to work for them and
4 it's been very hectic there after firing those two managers.
5 Nothing is resolved immediately because there are people that
6 have old habits and their difficult to change. So I've been
7 struggling in wanting to go to full-time teaching, but
8 unfortunately I feel responsible and maybe that's the way I am
9 for that position. Not until I have everything in order there,
10 then I can quit that job and go to teaching, which is my degree
11 is in teaching education.

12 So to make the story short, there has been some of the
13 supervisors that were there are retired and now we're in the
14 process of hiring new supervisors. So the state center where I
15 work, I have 150 employees under my direction, and all the
16 supervisors under my direction, so I don't think yesterday I
17 felt that maybe this was a good time for me to see if they can
18 manage the center without me being there and things happened.
19 As I haven't been able to take a vacation from there, because
20 every time that I leave something happens. And they send me a
21 series of e-mails that have to do with selection of the new
22 supervisors with training them. I found this during my lunch
23 yesterday, so I was thinking about it all afternoon during the
24 trial, and I was just thinking that I was needed there. And
25 even though I wanted to participate in this process, it's not

1 time for me to be away such a long time from that center. And
2 that's the way things are.

3 THE COURT: Okay. All right. Well, I will tell that
4 you in our country there are a lot of people who are in
5 important positions where they're supervising and running
6 operations --

7 JUROR VALENZUELA: I know.

8 THE COURT: -- that are critical, and because we live
9 in this country and we enjoy the benefits of this country, this
10 country asks very little of us in return; one is military
11 service, the other is jury service.

12 And so we all have to shoulder that responsibility,
13 including me. I get called to jury service, also, and so when I
14 get called, I show up, because that's our duty as Americans.
15 And if that duty only fell to those people that didn't have a
16 job, didn't have another commitment, then the face of our juries
17 would be very, very different and the input into our court
18 system would very, very different, and that's not the way the
19 system was set up.

20 The beauty of America is that in this country
21 everybody is the same, rich and poor, powerful and weak, all the
22 same under the law. And everybody gets a seat in the jury box
23 and everybody gets a voice in deliberations.

24 And so if we start eliminating those people that --
25 doctors? Oh, Judge I got patience scheduled for surgery. If

1 I'm not there that patient isn't going to have surgery. Well, I
2 understand. Truck drivers? Jude, I have a contract to deliver
3 perishable goods. If I'm not there to drive it, the goods are
4 all going to rot in my truck. Well, I understand. Everybody
5 has a really good legitimate economic reason for not serving on
6 jury duty. Lots of people do. Unfortunately, it's one of those
7 things we got to get the job done and everybody has to lend a
8 hand equally.

9 JUROR VALENZUELA: I understand, Your Honor, and
10 that's precisely why I didn't persist yesterday on, my -- on
11 this explanation.

12 I also like to mention that now that I'm close to one
13 of the attorneys, I don't know if -- I don't know him by name,
14 but I don't if he's your -- you seem familiar, because my
15 daughter is a close friend of a lady, an attorney, Soria; is she
16 your wife?

17 MR. HANSHEW: Yes, ma'am.

18 JUROR VALENZUELA: So I -- knowing that you're the
19 wife of Soria, I don't think I can be completely impartial,
20 because my daughter is a very close friend of Soria. Not
21 until -- because she went to the wedding and she talks about
22 Soria. I cannot never [sic] had the pleasure of meeting you,
23 but she has a picture of Soria and you. And I connected the
24 dots yesterday afternoon and now that I'm closer to you, I see
25 that your name starts with H., something like that, right? I

1 didn't pay attention, because I didn't know your name. Soria
2 goes by her maiden name, so that's why.

3 THE COURT: Ms. Kanof?

4 MS. KANOF: Move for cause.

5 THE COURT: All right. That's granted.

6 All right. Ms. Valenzuela, we'll schedule you for
7 another trial where Mr. Hanshew is not counsel and I'm sure --
8 so you don't have those issues. Thank you very much. If you
9 would -- do you have any other personal items in the jury room.

10 JUROR VALENZUELA: I don't think so.

11 THE COURT: Okay. Thank you so much.

12 JUROR VALENZUELA: Thank you.

13 (Juror Number 2 excused.)

14 THE COURT: Okay. So now we move -- Rene Saucedo will
15 be Juror Number 2. Okay.

16 So what about Ms. Lara? Should I call in the Mayor
17 and have him come down and --

18 MS. KANOF: We'd like to see the Mayor's explanation,
19 Your Honor.

20 THE COURT: Sure.

21 MS. KANOF: I mean, we'd like the Court to call the
22 Mayor in.

23 THE COURT: Oh, okay. Yes.

24 All right. Then we're ready to go. If you'd notify
25 Mr. Saucedo, he is now Juror Number 2 and seat him in the second

1 chair.

2 COURT SECURITY OFFICER HEIDTMAN: Yes, sir, I will.

3 THE COURT: If we can get Mr. Beddard. How do you
4 spell his name?

5 MS. KANOF: Gireud.

6 THE COURT: No, that's Gireud. No, no. The --

7 MS. KANOF: Oh, Beddard. I'm sorry.

8 THE COURT: How do you spell it?

9 MS. KANOF: B-E-D-D-A-R-D.

10 THE COURT: Beddard.

11 (Jury present.)

12 THE COURT: Let the record reflect that all members of
13 the jury are present, the United States through its assistant
14 United States attorney is present, the defendant and his counsel
15 is present. The witness Mr. Beddard is on the witness stand.

16 Ms. Kanof?

17 MS. KANOF: May I proceed, Your Honor.

18 THE COURT: Yes, ma'am.

19 JOSEPH KEVIN BEDDARD,

20 DIRECT EXAMINATION CONTINUED

21 BY MS. KANOF:

22 Q. Mr. Beddard, you understand you are still under oath?

23 A. I do.

24 Q. Mr. Beddard, do you know an individual by the name of Marco
25 Delgado?

1 A. Yes.

2 Q. How do you know him?

3 A. Concerning the contract with F.G.G.

4 Q. Is he here in the courtroom?

5 A. He is.

6 Q. Would you identify him by indicating where he is sitting?

7 A. He's sat over there.

8 Q. Over there. The record doesn't know what "over there"
9 means?

10 A. Okay. With the defense lawyers, in the gray jacket.

11 Q. Gray?

12 A. Well, it looks gray for me.

13 Q. In between the two defense lawyers?

14 A. Correct.

15 MS. KANOF: Let record reflect the witness has
16 identified the defendant?

17 THE COURT: Mr. Hanshew?

18 MS. FRANCO: No, objection, Your Honor.

19 THE COURT: I'm sorry. The record will so reflect.

20 BY MS. KANOF:

21 Q. What was your understanding was his role in the Agua Prieta
22 II Project?

23 A. Well, attorney.

24 Q. Attorney for who?

25 A. F.G.G.

1 Q. Okay. And we talked yesterday about you having to
2 implement contracts; is that correct?

3 A. Correct.

4 Q. And with regard to that, implementation meant what to you?

5 A. Basically, to administer the contract as such and to make
6 sure the supply contract will be fulfilled with supply, the
7 scope of supply, which includes not just the equipment, but the
8 delivery of those such as drawings, et cetera, also, making the
9 budget for internal purposes and, also, then making a payment
10 schedule, make sure that the invoices so we get the payments
11 coming in, right, accounts receivable.

12 Q. Were you concerned at all with something known as
13 assignment of collection rights?

14 A. Yes.

15 Q. What is assignment of collection rights?

16 A. Basically, for this contract -- normally we get paid
17 directly on a contract into Mitsubishi.

18 Q. Why is that?

19 A. Because the contracts are normally that way and it gives us
20 assurance that payment we receive it into our bank.

21 Q. Well, you said yesterday that normally there isn't an
22 intermediary company like F.G.G., correct?

23 A. Correct.

24 Q. Usually, it's Mitsubishi and the people that are going to
25 use the energy, right?

1 A. Or an E.P.C., erection contractor there who is actually
2 building the plant.

3 Q. So, in this case, however, since there was an intermediary,
4 you wanted an assignment -- you, meaning Mitsubishi, wanted an
5 assignment of collection rights; is that correct?

6 A. Correct.

7 Q. And why did you want that?

8 A. Well, it gives us assurance of payment. So what we invoice
9 with accounts receivable, we get that amount in and it comes
10 from a reliable entity and that it means that no one can mess
11 about with the payment.

12 Q. So even through you were selling the equipment to F.G.G.,
13 you, Mitsubishi, wrote in to the contracts that they did
14 participate that they would have an assignment of collection
15 rights; is that correct?

16 A. Somebody in Mitsubishi did.

17 Q. Okay.

18 A. I -- I reviewed that on the VISC analysis to find out, you
19 know, why aren't I getting the payments directly to our project?
20 It's because we have to wait for the assignment.

21 Q. In other words, for you to do your job, you had to make
22 sure that you were going to get that money directly so that you
23 could keep preparing the generators; is that correct?

24 A. Correct.

25 Q. Yesterday we were talking about Government's Exhibit 12A.

1 MS. KANOF: If you could display it, please?

2 BY MS. KANOF:

3 Q. That's basically the subcontract between Mitsubishi and
4 F.G.G. Do you recall this contract?

5 A. I do.

6 Q. Now, that contract at the bottom appears to have been
7 entered into on December 16th of 2009, correct?

8 A. Correct.

9 Q. And I'm going to draw your attention in that contract
10 to page -- let me find it -- to clause 15. This contract
11 doesn't have any pages so it's a little bit difficult to find.
12 Oops.

13 MS. KANOF: I'm sorry. How do I get out of it? Zero.
14 It disappeared. It's good. It's gone. Okay. Okay. Thank
15 you. I'm showing my age.

16 Okay. Clause number 15 -- no, it didn't go away. It
17 didn't escape. Okay. Thank you.

18 You can tell Ms. Arreola is much younger than I am.

19 BY MS. KANOF:

20 Q. Okay. Clause number 15. Clause number 15, in fact, is
21 called assignment of collection rights; is that correct?

22 A. Correct.

23 MS. FRANCO: Your Honor, I've been very tolerant of
24 the leading nature of Ms. Kanof's questions.

25 THE COURT: Sustained.

1 BY MS. KANOF:

2 Q. What is clause number 15?

3 A. It's where F.G.G. -- to get the assignment from the end
4 user, so we receive our money directly into our bank account.

5 Q. And is that written directly into the subcontract?

6 A. Well, that's a copy of the letter from the federal
7 electricity commission confirming the approval of the aforesaid.
8 It's attached to this subcontract.

9 Q. So what exactly was the agreement in the subcontract with
10 regard to assignment of collection rights?

11 A. The agreement from here what I was told was that as soon as
12 the contract between F.G.G. and the Comisión or C.F.E., it would
13 be wrote in there that they would assign collection rights to
14 directly to Mitsubishi.

15 Q. Okay. So, it -- because there was no relationship directly
16 between C.F.E. and Mitsubishi, the subcontract had a clause in
17 it that F.G.G. had a responsibility to get those rights for
18 Mitsubishi; is that correct?

19 MS. FRANCO: Your Honor?

20 THE COURT: Sustained.

21 MS. KANOF: I'm sorry.

22 BY MS. KANOF:

23 Q. What was the purpose then of this clause?

24 A. To establish that we get a direct line of payment from the
25 end user into our account.

1 Q. So from the very beginning, then there was a prime
2 contract. Was there a contract between F.G.G. and C.F.E.?

3 A. Yes, there was a contract.

4 Q. I'm going to draw your attention to Government's Exhibit
5 Number 18. And there's and 18 in Spanish and 18A.

6 MS. KANOF: Your Honor, we would move to admit -- this
7 is an item that was provided through the Mutual Lateral
8 Assistance Treaty.

9 THE COURT: Ms. Franco?

10 MS. FRANCO: No, objection.

11 THE COURT: Admitted GX-18 and GX-18A are admitted.

12 BY MS. KANOF:

13 Q. And if I draw your attention to the front page, on what --
14 when was that contract entered into?

15 A. Well, on this page it says January 2010.

16 Q. And specifically are we talking about -- it says the
17 National Bank of International Commerce as a fiduciary. Exactly
18 who did F.G.G. enter into a contract with, if you know?

19 A. I can only say that it was the Comisión.

20 Q. You don't know how to pronounce it, but somebody that was
21 representing F.G.- -- the C.F.E.; is that correct?

22 A. I think the Comisión represents the payment of Mexico.

23 Q. If you'll look at Roman numeral number II under recitals.
24 Does that refresh your memory?

25 A. No, because I never dealt with the maximum.

1 Q. Okay. And at the bottom of page two on the right-hand
2 side, does it give the date that this contract was entered into?

3 A. Yes, January the 6th.

4 Q. Okay. I'm going to turn your attention to page 12 of the
5 prime contract. And you didn't sign this contract, because
6 Mitsubishi was not a party to it; is that correct?

7 MS. FRANCO: Your Honor, objection.

8 THE COURT: Sustained.

9 BY MS. KANOF:

10 Q. Did you review this contract in order to fulfill your
11 obligations?

12 A. No.

13 Q. Initially, on page 12 of the contract, does it have where
14 the payments were agreed to be wired?

15 MS. FRANCO: Your Honor, this witness has already
16 testified that he didn't review this contract.

17 MS. KANOF: But Your Honor, it's part of his job and
18 this is what he tries to --

19 THE COURT: The document's in evidence. He can tell
20 us what the document says. He can read it.

21 BY MS. KANOF:

22 Q. Under the 14th paragraph, payment location, what was the
23 original agreement for the payment location?

24 A. According to this contract?

25 Q. Yes.

1 A. The wire contract is Wells Fargo Bank in El Paso.

2 Q. And what are the last four digits of the account number?

3 A. 00.

4 Q. Last four digits?

5 A. That's 1614.

6 Q. Okay. And with regard to -- on page 13, there's a
7 paragraph 16. With regard to paragraph 16 -- excuse me -- do
8 you know whether or not the Comisión through their trustee,
9 agreed to assignment of collection rights? Look at paragraph
10 15.

11 A. I just reading it.

12 It says that the supplier would apply in writing for
13 the collection rights to be changed.

14 Q. Okay. And paragraph V of the assignment of collection
15 rights, do you understand whether or not Mitsubishi required
16 paragraph V to be included in the prime contract?

17 A. I do not know.

18 Q. Okay.

19 That number, the Wells Fargo Bank number, do you know
20 what that account was?

21 A. No, I don't. I can only speculate.

22 Q. I'm showing to you -- displaying to you Government's
23 Exhibit 144.

24 MS. KANOF: Your Honor, this has a self-proving
25 affidavit, these bank records, and we'd ask that it be moved

1 into evidence.

2 THE COURT: Ms. Franco?

3 MS. FRANCO: No, objection.

4 THE COURT: GX-144 is admitted.

5 BY MS. KANOF:

6 Q. And this item from Wells Fargo bank, do you see an account
7 number?

8 A. I do.

9 Q. And does it have the last four digits that you read to the
10 jury?

11 A. I did, 1614.

12 Q. And does it have a date when the account was opened?

13 A. Date was 07-17-2009.

14 Q. Okay. And I know that's in the American way and there's no
15 17th month anyway, so that would be July 17th?

16 A. Correct.

17 Q. Okay. And the date that preceded, did it precede the date
18 of those two contracts?

19 A. Yes.

20 Q. Okay. So was it your responsibility then to ensure that
21 the assignment of collection rights was in place before you
22 invoiced for the first payment?

23 A. I had to ensure it was going on for my subcontract, right,
24 that the assignment was in play.

25 Q. Okay. And did you eventually invoice for the first

1 subcontract?

2 A. I did.

3 Q. Okay.

4 MS. KANOF: Government's Exhibit Number 41.

5 BY MS. KANOF:

6 Q. Is that an e-mail that you sent?

7 A. Yes, it is.

8 MS. KANOF: We move for admission of Government's
9 Exhibit Number 41.

10 THE COURT: Ms. Franco?

11 MS. FRANCO: No, objection.

12 THE COURT: GX-41 admitted.

13 BY MS. KANOF:

14 Q. To whom did you send it?

15 A. Fernando Gireud, it was.

16 Q. And why did up send it to him?

17 A. Because as I mentioned yesterday, we have protocols, right,
18 and who receives mail. Like all mail comes to me directly as
19 the project managers or any one of my project managers, and then
20 we get an assignment, a name from the client of who all of the
21 mail goes to and they give us that all of official mail has to
22 go to Fernando.

23 Q. Okay. And so when -- what was the purpose of this e-mail?

24 A. That one was -- because of the contract on the fast payment
25 schedule.

1 Q. Okay. And you were sending it -- an e-mail for what
2 purpose?

3 A. To put in our first hour, first invoice into play.

4 Q. Previously you said that there was approval process for all
5 of your e-mails. Does that indicated here?

6 A. Yes, it is.

7 Q. And I've highlighted the approval process. What does this
8 mean?

9 A. Basically, the first name is the initiator who writes it,
10 right, and then it goes to -- the second part there is the one
11 over them, approves and checks it and approves it to go to the
12 next floor.

13 Q. So who wrote it?

14 A. I wrote this one.

15 Q. Who was the first approver?

16 A. It is me, actually.

17 Q. And the next approver?

18 A. It was the V.P. of commercial, Ueki-san.

19 Q. Then did it go back to you?

20 A. Then it went back to me, because it goes back in that work
21 floor, because if Ueki made any changes, right, from a
22 commercial, I must check that to ensure that it didn't affect
23 the technical part, so then I review it, then I send it back.

24 Q. And then who's Mr. Nomba (phonetic)?

25 A. Nomba was the commercial and salesperson who works for

1 commercial.

2 Q. And does your e-mail start at "Dear, sir"?

3 A. Yes.

4 Q. And could you read that to the jury, please?

5 A. As we approach the finalization of our agreement, according
6 to its revised payment schedule with the first invoice payment
7 you did as the 6th of March, please find attached a copy of the
8 reference invoice. The original will be sent by courier on the
9 12th of February, 2010. Can you please review the invoice
10 submittal and inform if you require any further backup
11 documentation. And then it says, best regards, and I've
12 attached the said invoice.

13 Q. So where did you get the date of the 6th March as the first
14 payment that you should receive? You, meaning Mitsubishi.

15 A. What I look at is the contract and then it normally has a
16 payment net 30 days, net 60 days.

17 Q. And how far in advance from the date of payment do you send
18 an invoice?

19 A. Normally, as early as possible. But normally, I'm governed
20 in the contract when I can send it. But normally, one month,
21 six weeks.

22 Q. So this e-mail was dated February 12th of 2010, correct?

23 A. Yes.

24 Q. And attached to this e-mail, what did you attach?

25 A. The invoice.

1 Q. On the screen now, is that the invoice that you attached to
2 the e-mail?

3 A. Could you scroll a little bit further? Yes, because it's
4 my signature.

5 Q. Who did you write the invoice to?

6 A. Again, Fernando Gireud, who was the president of F.G.G.

7 Q. Did you -- had you received from F.G.G. the assignment of
8 collection rights, yet?

9 A. No.

10 Q. So did you know where or who was going to be sending your
11 money on March 6th?

12 A. Basically, no.

13 Q. Okay. Were you and other employees at Mitsubishi still
14 trying to attain an assignment of collection rights?

15 A. Yes.

16 Q. With regard to the invoice, how much money are you
17 invoicing?

18 A. The total amount there was 16,995,000.

19 Q. Do you know how much the first payment, what agreement
20 between F.G.G. and C.F.E. was for the first payment that would
21 be sent to them?

22 A. I don't know.

23 Q. Okay. But this is how much -- what this amount, almost
24 \$17-million, represented what?

25 A. That represented the payment scheduled between Mitsubishi

1 and F.G.G., which I think I said it was annex five, which meant
2 that we get the invoice 16.5 percent of the contract value.

3 Q. Is that a standard percentage for a first payment?

4 A. Not really because every contract changes. It has nuances.
5 And that's one of the reasons we have to check the contract for
6 the payment, right.

7 Q. Okay. So what was the total price then at this point?

8 A. At this point to my knowledge, right, was our portion was 1
9 or 3 million.

10 Q. So this would be 16-and-a-half-percent of 103 million?

11 A. Basically, this could have been the equipment contract,
12 right, supply was 106.6 million and included in that was a fee
13 basis to F.G.G.

14 Q. Okay. What was that fee for?

15 A. That was for services and also certain of commercial and
16 financial.

17 Q. And as part of the invoice you laid out on the second page
18 of the invoice, you broke it down; is that correct?

19 A. Correct.

20 Q. And could you explain how you broke it down?

21 A. Basically, what we did, we had to the bill of sale for the
22 two gas turbines, so basically each gas turbine's value to the
23 contract was 45 million, right, and 835,000, so, for one gas
24 turbine. So 16 and half percent of that and then timed by two,
25 because it's two units, gives me the total price of

1 15-point-125,550 dollars for the gas turbine portion. And then
2 the second portion would be for the steam turbine, which had a
3 value of 11.3 million. And then so again, I did 16.5 percent of
4 that, which accumulated to 1-point-869,450.

5 Q. Where did you get the 16.5 percent?

6 A. Basically, that was in the annex of payment schedule.

7 Q. Of which contract?

8 A. Of F.G.G. and Mitsubishi.

9 Q. All right. The subcontract --

10 A. Yes.

11 Q. -- government's 12?

12 A. Correct.

13 Q. All right. Now below on the left-hand side in the box
14 marked description, there's a box that has some other
15 information in it. What is this all about?

16 A. Basically, as I said as part of our subcontract, we wanted
17 the assignment of collection rights. We had the right to get
18 that. So that was put into that, again, reminding who I want
19 paying or Mitsubishi wanted paying into our account directly
20 that amount that we've invoiced. So basically what I've done
21 here is put part of the contract in there to say, you know,
22 collection rights, whether it's the Comisión or it's F.G.G.
23 whether it's Tom Blogs [sic], you know, that 16 million goes
24 into Mitsubishi's account directly.

25 Q. Did -- where did you lift that language from. You have

1 quotation marks?

2 A. Basically, that would be from the subcontract.

3 Q. And after that below you have the words "remit to."

4 A. Correct.

5 Q. What is that information?

6 A. That is the bank of Mitsubishi where our account is. And
7 that's our account date and there's a routing number.

8 Q. So this invoice is consistent with what?

9 A. Normal practice, Mitsubishi for invoicing.

10 Q. And is it also consistent with the subcontract between
11 F.G.G. and Mitsubishi?

12 A. Yes.

13 Q. Is that where the money was wired?

14 A. Eventually, some money was.

15 Q. Was it wired directly --

16 A. No.

17 Q. -- from C.F.E. as per this little box?

18 A. No.

19 Q. Okay. C.F.E. did not wire the money to you?

20 A. Uh, no.

21 Q. And earlier in your e-mail you said you were -- you gave a
22 date that the payment was supposed to be made?

23 A. Correct.

24 Q. Was that payment made on the 6th of March of 2010?

25 A. No.

1 Q. I'm sorry, I can't hear you.

2 A. No.

3 Q. Okay. Do you remember when you finally got paid?

4 A. I don't, but it could've been at the end of March.
5 Eventually.

6 Q. Okay. With regard to Government's Exhibit Number 47A. I'm
7 going to just use the English.

8 Now, I'll ask you just to look at this and ask whether
9 or not you've ever seen the suggested revised payment schedule?

10 A. Yes.

11 Q. Okay. And when did you see this and why did you see this?

12 A. I cannot remember when I did first see this.

13 Q. I'm sorry?

14 A. I could not definitely say when I've seen this. It would
15 be in early 2010.

16 Q. Why did you -- what were -- was this provided to you?

17 A. Well, if you look and if you scroll down again.

18 Q. Yes, sir.

19 A. It says here, the first -- the event and date and the price
20 offered and then it says assignment of contract the first
21 payment is two -- you're moving too fast.

22 Q. I'm sorry?

23 A. Okay. The first payment is two months after signing the
24 contract. So basically, this one was with F.G.G. and C.F.E., so
25 I took that as January the 6th, right, so two months after that

1 is March the 6th, so that's why I put March the 6th down as the
2 payment was due. And then we come to the next column. It's
3 price offered was -- it says 16.5 percent.

4 MS. KANOF: Excuse me, Your Honor, since he used this
5 to figure his invoice, may we publish it to the jury and move it
6 in admittance as Government's Exhibit 47A.

7 THE COURT: Any objection to 47A.

8 MS. FRANCO: Yes, Your Honor. It's not an e-mail that
9 he either authored or received. At the beginning of 47A is an
10 e-mail.

11 MS. KANOF: Um, we -- you know, we'll tie it up later,
12 Your Honor. Mr. Ponce will testify that he received it.

13 THE COURT: Well, when is Mr. Ponce going to testify?

14 MS. KANOF: Probably tomorrow.

15 Anna?

16 Probably tomorrow.

17 THE COURT: All right. I'm going to allow you to
18 display that to the jury. I'm going to admit it provisionally,
19 but Mr. Ponce absolutely needs to lay the foundation to that.

20 MS. KANOF: Yes, Your Honor.

21 THE COURT: All right.

22 BY MS. KANOF:

23 Q. All right. Now with regard to this chart --

24 MS. KANOF: I won't show the e-mail until Mr. Ponce
25 has testified, Your Honor, just the chart that he used.

1 BY MS. KANOF:

2 Q. What were you saying about the first payment?

3 A. Basically, the first payment says here two months after
4 signing of the contract.

5 Q. Okay.

6 A. So basically, as we see in the C.F.E.-F.G.G. contract was
7 signed on January the 6th, right, so from January the 6th, the
8 first payment was due two months later which was March the 6th,
9 which I put in my letter that payment was due March the 6th.

10 Q. Okay. And with regard to the other two columns it says
11 Option A and Option B. Did you have input regarding your
12 opinion of Option A and Option B?

13 A. Basically, I was not in control of that one.

14 Q. All right. And at some point in time, did the price
15 adjustment occur?

16 A. Yes.

17 Q. Do you know when that was?

18 A. It was -- I think it was March-, April-time of 2010.

19 Q. Now, with regard to the payment schedule getting changed,
20 are you familiar with how the payment schedule was changed?

21 A. The first time?

22 Q. The first time.

23 A. The first time, basically, I understood that there would be
24 a reduction of 1 million from our contract and it would be split
25 half a million from our portion and half a million from T.A.I.

1 portion, right.

2 Q. Well, you didn't participate in changing -- reducing your
3 price, did you?

4 A. No.

5 Q. No. But as a result of it, were you given a new price for
6 you to figure how much to invoice?

7 A. I did. I was given 102 million.

8 Q. When you invoiced, did you invoice a different amount?

9 A. I --

10 Q. Did you re-do the first invoice?

11 A. Uh --

12 Q. Or did you take the new amount into account in the second
13 invoice?

14 A. I cannot remember.

15 Q. Okay. With regard to -- we talked about this kick off
16 issue. Have you still -- now you're asking for money and it
17 said February for March 6th, did -- had you had a kickoff
18 meeting, yet?

19 A. No.

20 Q. How do you know -- did you expect to get the money on
21 March 6th?

22 A. Yes.

23 Q. Okay. And why did you need the money on the scheduled
24 date?

25 A. Well, for the refurbishment I needed to get the equipment

1 and I was out laid because we were doing inspections, we were
2 doing engineering interfacing, so I was paying for storage fees.
3 So I had a lot of outlay going out, with it, so basically I
4 needed some inflow to balance my books or my budget.

5 Q. Do you send an e-mail to Mr. Delgado? It's a little bit
6 difficult seeing this.

7 MS. KANOF: Could you -- can you give me number 55,
8 please?

9 I got it. No, that's not it. I'll do it.

10 BY MS. KANOF:

11 Q. Did you send and e-mail on April 1st of 2010 to Mr. Gireud
12 with copies to Mr. Delgado?

13 A. Yes.

14 MS. KANOF: We move that Government's Exhibit Number
15 55 be admitted into evidence.

16 THE COURT: Ms. Franco?

17 MS. FRANCO: No, objection.

18 THE COURT: GX-55 is admitted.

19 MS. KANOF: I'm sorry. I keep walking on you, Judge.

20 THE COURT: It's all right.

21 BY MS. KANOF:

22 Q. What's the date of the e-mail?

23 A. The date is the 1st of April, 2010.

24 Q. What was the purpose of the e-mail?

25 A. I tried to track down where the payment was.

1 Q. And who did you write it to?

2 A. Fernando Gireud.

3 Q. All right. So you were supposed to get the first payment
4 on March 6th; is that correct?

5 A. Correct.

6 Q. And now it's April 1st?

7 A. Correct.

8 Q. And you still have not received the payment?

9 A. Correct.

10 Q. Did you know that Mr. Delgado had \$20 million in his bank
11 account from C.F.E. at this time already?

12 A. No.

13 Q. Did you know that the payment was made timely in the second
14 week of March?

15 A. No.

16 Q. And so you are -- you've copied Mr. Delgado on this e-mail,
17 correct?

18 A. Yes.

19 Q. And you've used two different e-mail accounts in order to
20 copy him. Why did you do that with regard to your protocol?

21 A. Basically, normally when -- if I get sent another e-mail
22 address from the same person, I put them into my address book.

23 Q. All right. And so at some point in time you had already
24 communicated with Mr. Delgado?

25 A. I think so.

1 Q. And what are you asking him --

2 A. Um --

3 Q. -- or asking Mr. Gireud in copying Mr. Delgado?

4 A. It says, Fernando, we've been informed that our payment for
5 our invoice was wired to your bank yesterday as of 4:00 p.m.
6 Thursday the 1st of April. No payment has been received --
7 meaning no payment received in our bank. Can you please send us
8 the bank statement, transaction number for C.F.E.-F.G.G. wire
9 transfer to Mitsubishi Power Systems America.

10 Q. Let's break this down. You were informed that Mitsubishi's
11 payment for the invoice was wired to your bank the day before;
12 is that correct?

13 A. That's correct.

14 Q. Okay. Who informed you of that, do you know or recall?

15 A. I don't recall.

16 Q. All right. And so you're basically asking them -- I think
17 the e-mail speaks for itself.

18 MS. FRANCO: Your Honor?

19 THE COURT: Sustained.

20 BY MS. KANOF:

21 Q. Do you continue to communicate with Mr. Gireud regarding
22 this issue?

23 A. I think so. Yeah.

24 Q. Okay. Government's Exhibit Number 57, do you recognize
25 that as an e-mail from you to Mr. Gireud?

1 A. Yes.

2 MS. KANOF: Move that Government's Exhibit Number 57
3 be admitted into evidence.

4 THE COURT: Ms. Franco?

5 MS. FRANCO: No, objection.

6 THE COURT: GX-57 is admitted.

7 MS. KANOF: Okay.

8 BY MS. KANOF:

9 Q. And do you recall this e-mail?

10 A. Yes.

11 Q. And beginning at, as most mail chains do at the bottom, did
12 you initiate this e-mail chain or did Mr. Gireud?

13 A. I initiated.

14 Q. And can you tell me what date?

15 A. I initiated the first one on April the 1st I just
16 mentioned, 2010.

17 Q. And then that -- and then was it responded to?

18 A. I can't remember, but it will be a chain of e-mails.

19 Q. Okay. Did Mr. Gireud respond to you on the same day?

20 A. Yes.

21 Q. What did he tell you?

22 A. He said, Hi, Kevin. I do not have the information yet. My
23 bank just told me that I was getting a wire transfer today for
24 one -- I take it as 1 million -- and that it will be posted
25 tomorrow morning. I bank with Wells Fargo and they told me that

1 usually the national transactions take three to five business
2 days. If I find out more info I will call you all and Hector.

3 Q. And how did you respond?

4 A. Basically, I responded, Fernando, for your information, the
5 payment had not arrived by noon Friday. We will check Monday we
6 will require transaction numbers and track -- for tracking
7 purpose.

8 Q. When he said that he was supposed to get \$1 million into
9 his account, what did you do?

10 A. Uh, well, for me, I'm not there to deal with F.G.G.
11 business. That could be getting 1 million from anywhere. I'm
12 waiting for my money, Mitsubishi money.

13 Q. And how much money were you waiting for?

14 A. Basically, initially the invoice was 16 million and I think
15 it got reduced to 15.

16 Q. And how does he respond to you on Sunday, April 4th?

17 A. Basically, on the 4th he says, Hi, Kevin, as I said last
18 week, I will be trying to find out tracking numbers or anything
19 to help you. Unfortunately, I do not have any control of this.
20 As you know, the info from your bank was sent directly to Marco
21 and I think he transferred the info to C.F.E. and the Federal
22 Comisión, but I will try to find out. Have you reviewed the
23 codes and all of the info to make sure it was okay? I have a
24 doctor's appointment from 8:00 a.m. to about 11:00, E.L.P.,
25 El Paso time. I will call while I wait with the doctor.

1 Q. Why did you continue to communicate with him when he said
2 it was Mr. Delgado who provided your wiring information?

3 A. Because bank protocol is actually Fernando, unless Fernando
4 tells me to contact.

5 Q. And finally on this e-mail chain of that Monday, what did
6 you respond to Mr. Gireud?

7 A. On the Monday, which I take it would be the 5th of April,
8 Fernando, just a reminder, please send a copy of C.F.E. letter
9 you received last week referring to the C.F.E. payment and a
10 request for a kickoff meeting.

11 Q. Did you eventually get your approximately
12 16-plus-million-dollars?

13 A. No.

14 MS. FRANCO: Objection, Your Honor. He testified that
15 he was expecting 15 million not 16.

16 BY MS. KANOF:

17 Q. I'm sorry. How much were you expecting?

18 THE COURT: Well, I'll sustain your objection.

19 MS. FRANCO: Thank you, Your Honor.

20 BY MS. KANOF:

21 Q. How much were you expecting, sir?

22 A. The initial invoice was for 16.8 million, whichever it was,
23 but then it was negotiations and things and I think it got
24 reduced down to 15.

25 Q. Okay. With regard to Government's Exhibit Number 67, are

1 you copied on this e-mail?

2 A. Yes, ma'am.

3 Q. And why are you copied on this e-mail?

4 A. Well, I'll be the project manager.

5 Q. And is it important for you to have the information in the
6 contents of this e-mail?

7 A. With dealing with balances and amount going into the
8 project, yes.

9 MS. KANOF: Move to admit Government's Exhibit Number
10 67 into evidence.

11 THE COURT: Ms. Franco?

12 MS. FRANCO: No, objection.

13 THE COURT: GX-167 is admitted.

14 BY MS. KANOF:

15 Q. Could you please tell the jury what this is e-mail is
16 about?

17 A. It's from John Adams, who was my boss at the time, to
18 Fernando. Unfortunately, your letter did not clear up the
19 situation. In good faith, we had agreed to the first payment
20 from F.G.G. to M.P.S.A. in the amount of
21 40-million-point-493-thousand-434. And we expected you to
22 confirm the same as you verbally did yesterday. Please confirm
23 that M.P.S.A. and T.A.I. will receive the balance of the amount
24 due immediately.

25 Also, we must clearly be informed of all common

1 payments amounts and dates, so that we have certainty of the
2 payments of the total amount of 103 million will be paid. Also,
3 we need your confirmation that all financing, L.C. and banking
4 fees are outside the scope and the price.

5 Q. So does that refresh your memory how much money you were
6 supposed to receive in April?

7 A. 40-million-493.

8 Q. How much did you receive?

9 A. Eventually, we received 11 million and I can't remember.

10 MS. FRANCO: Your Honor, I'm sorry to interrupt at
11 this time, but the Government's 67 that I have isn't the one
12 that's being displayed. Maybe if Ms. Kanof can scroll down to
13 show us the exhibit number.

14 MS. KANOF: Oh, I'm sorry. I'm talking about
15 Government's 61. I apologize and would move Government's 61.
16 67 is the next e-mail.

17 THE COURT: Ms. Franco?

18 MS. FRANCO: No, objection Your Honor.

19 THE COURT: GX-61 is admitted.

20 MS. KANOF: I apologize.

21 BY MS. KANOF:

22 Q. So, you -- this is an e-mail verifying that you did expect
23 the 14-and-a-half and you received how much, I'm sorry?

24 A. It was 11.3 million I think or about.

25 Q. And with regard to that, Government's Exhibit Number 67,

1 now 67, you recognize this e-mail as having been initiated by
2 you?

3 A. Yes.

4 MS. KANOF: We move 67 into evidence at this time?

5 THE COURT: That is in evidence, 67.

6 BY MS. KANOF:

7 Q. And what is this document?

8 A. The subject of the document is the F. -- the Agua F.G.G.
9 subcontract for purchase of gas turbine generators and steam
10 turbine generators.

11 Q. What is the date?

12 A. The date is the 20th of April, 2010.

13 Q. And attached to this e-mail is what document?

14 A. It says that it's invoice number two.

15 Q. Okay. Do you recognize the attachment?

16 A. Yes, it's the second invoice.

17 Q. And if you could please describe -- first of all, what is
18 the date in the second invoice?

19 A. March 23rd.

20 Q. You previously testified that you had not received the
21 first payment until sometime in April; is that correct?

22 A. The first payment, yes.

23 Q. So you are sending the second invoice even before you
24 receive the first payment? Why are you doing that?

25 A. Because the payment schedule, they noted that.

1 Q. I'm sorry. Can't hear you, sir.

2 A. The payment schedule agreed, right, would have denoted that
3 the second invoice would be due.

4 Q. Okay. And what percentage of the total contract are you
5 invoicing on March 23rd?

6 A. On this one it's down to 10 percent of the 45 million for
7 the gas turbine and 10 percent for the steam turbine.

8 Q. And as a result, what is the total dollar amount that you
9 are requesting?

10 A. Basically, further payments of 9,780,907. After paying
11 back another payment of 1 million point 1 million [sic].

12 Q. Okay. When you say "paying back," what do you mean?

13 A. Well, the new payment schedule that changed and given me,
14 meaning that the first invoice, right, was 10 percent of the
15 contract, which meant that I needed 10.2 million not 16 million,
16 so they actually only sent was 11-million-and-3, so there was a
17 deficit, so they'd overpaid us according to their next payment
18 schedule, right. So I in theory had to pay that money back.
19 You know I can't accept anything that was not mine or
20 Mitsubishi, so I had to give them a credit on that one and then
21 the deduction is deducted.

22 Q. Okay. So let's go back to the first payment. The first
23 payment originally your invoice was...

24 A. 16-million- --

25 Q. Something.

1 A. -- -something.

2 Q. And it was renegotiated and you were supposed to get...

3 A. Basically, again, it was renegotiated and we were forced to
4 get, um --

5 Q. 14-something?

6 A. It was 14,300,000.

7 Q. And I've highlighted what you actually got. How much?

8 A. We actually got out of the 14 million, 11 million.

9 Q. No, the actual -- when you were supposed to get 14 million,
10 you have put first payment received April 1st?

11 A. Yes.

12 Q. And how much did you actually receive?

13 A. 11-million-point-3.

14 Q. Okay. And -- but you expected based on the negotiation to
15 get more?

16 A. Yes, 14 million.

17 Q. All right. Why are you giving money back if you got less
18 than you were supposed to get?

19 A. Because they renegotiated again, because we didn't get the
20 money. And so they made another payment schedule, right, to say
21 that the first payment, right, should have been
22 10-million-point-2, right, with it.

23 Then the second payment would be the second payment,
24 which is the top, would be 9 million as expected, additional 9
25 million, and then for the steam turbine, additional 1.1 million

1 for the second payment. So when I put them both together what
2 I've got to look at is that now with the new payment schedule,
3 the first payment, which initially was 16.8 million, right, then
4 changed to 14, now it changed to actually 10.2 million. I'd
5 received 11.3 million. So I had deduct, right. So there was
6 access -- in excess of the invoice of one point. And because
7 we're honorable, right, we paid that back. Well, we gave a
8 credit. So I gave a credit of that back in the second invoice
9 and that's why that change.

10 Q. In this box is this -- what is this language?

11 A. Again, it's the same language I put on all, because we had
12 not received the direct payment. The assignment of our
13 collection rights was not given to us still at this time, right,
14 so again I put that same block of language in and then I put
15 again remit to Mitsubishi bank.

16 Q. Before you said that you have to accept a contract, had you
17 accepted this contract yet?

18 A. No.

19 Q. Why?

20 A. Because it was too fairy-fairy. It just -- I could not
21 operate it, you know, with it. They were changing payment
22 schedules on me, right, with it, because we didn't get paid, so
23 then it was renegotiations, so we didn't get a rock solid, full
24 counter-contract for me to administrate it. So then they wanted
25 to do a new amendment to make that contract whole, so a new

1 amendment was organized.

2 Q. Was there ever an amendment about the collection rights?

3 A. No.

4 Q. Was there ever an amendment about the letters of credit?

5 A. No.

6 Q. Government's Exhibit Number 68, do you recognize this as
7 being your e-mail address?

8 A. Yes.

9 MS. KANOF: Move Government's 68 into evidence.

10 THE COURT: Ms. Franco?

11 MS. FRANCO: One moment, Your Honor.

12 THE COURT: Yes, ma'am.

13 MS. FRANCO: No, objection.

14 THE COURT: GX-68 is admitted.

15 BY MS. KANOF:

16 Q. And do you recognize this is an e-mail from you?

17 A. Yes.

18 Q. Can you -- what is the date of the e-mail?

19 A. The date is April the 20th.

20 Q. And are you saying the one saying "Dear, sir"?

21 A. Yes.

22 Q. What is this e-mail about?

23 A. Basically, I'm asking that there be a mutual agreement to
24 the payment terms specified under the same contract. And it's
25 been our recent agreement to amend payment terms and reflecting

1 annex five attached to this letter. So I'm just reiterating
2 basically that our first payment under that annex should have
3 been 14-million-point-493-434.

4 Q. And not the 11 million?

5 A. No.

6 Q. Okay. Now in this second paragraph you talk about fees for
7 letter of credit. Can you explain why you are talking about
8 that?

9 A. Basically, our subcontract, again, we supplied the
10 equipment and the financial part of this would be guarantees,
11 had to be put up, and normally guarantees are letters of credit
12 put in place as a guarantee of financial.

13 Q. Who was supposed to provide letters of a credit to
14 guarantee the equipment in this case?

15 A. F.G.G.

16 Q. F.G.G.?

17 A. Yes.

18 Q. And that -- was that in any of the other contracts that you
19 had entered into with them, if you can recall?

20 A. As far as I know, all of the fees were F.G.G.s.

21 Q. All right. Let me go to -- were you familiar with the
22 teaming agreement?

23 A. Not in-depth, no.

24 Q. But was it one of the agreements that you had to review?

25 A. Yeah. I reviewed it as part of the risk analysis at the

1 beginning.

2 Q. Okay. And on page four of the -- what was the teaming
3 agreement?

4 A. It was the mutual agreement between the parties about the
5 equipment and how it would be if it was sold and went forward, a
6 structure to go toward.

7 Q. And it was between who?

8 A. Between Mitsubishi, F.G.G. and T.A.I., Thomas Aircraft
9 International.

10 Q. T.A.I.?

11 A. T.A.I.

12 Q. Okay. And so you had to review this document in order to
13 do your job?

14 A. I did a risk analysis, right, to find out if anything
15 affected, right, the administration to the subcontract.

16 Q. Did you rely on the language in the teaming agreement to do
17 your risk analysis?

18 A. Basically, yeah, it was there. It was agreed by all
19 parties, so I took that as permissible.

20 MS. KANOF: Government moves Government's Exhibit 7.

21 MS. FRANCO: We object, Your Honor. He's not the
22 author of it.

23 THE COURT: All right. So what is your objection?

24 MS. FRANCO: Well, as to she hasn't laid the proper
25 foundation for it, Your Honor. He says they've reviewed it for

1 risk assessment. He didn't review for any other purpose but
2 that as far as the financial terms.

3 THE COURT: Her objection is foundation, Ms. Kanof.

4 MS. KANOF: Your Honor, the parties who entered into
5 this will testify. It was signed by -- it was signed by -- I
6 think it was signed by Mr. Gireud and by John Adams who will
7 both testify. John Adams should testify either today or
8 tomorrow and Mr. Gireud is going to testify next.

9 THE COURT: And they will identify the documents?

10 MS. KANOF: They will, Your Honor.

11 THE COURT: And lay the proper foundation if that is
12 what it is?

13 MS. KANOF: Yes.

14 THE COURT: All right. I'm going to admitted
15 provisionally with the understanding that that will be -- the
16 foundation will be laid by Mr. Gireud.

17 BY MS. KANOF:

18 Q. Mr. Beddard on page four of the teaming agreement, there's
19 a paragraph number two called "mutual obligations," do you see
20 that?

21 A. I do.

22 Q. And in the middle of that paragraph, does it indicate who
23 must provide the letters of credit for the equipment and
24 service?

25 A. It says F.G.G. will also provide any letters of credit

1 required by the R.F.P. for the supply of the equipment and
2 service.

3 Q. What's an R.F.P.?

4 A. It's basically the request for a price of estimate.

5 Q. It's the bid?

6 A. It's the bid, yeah.

7 Q. Okay. So there was an agreement then. And did you look at
8 any other documents that also verified that? Do you know
9 whether or not it's in the prime contract, the letters of credit
10 language?

11 A. Again, I did not do the prime -- the prime contract is not
12 my contract.

13 Q. Okay.

14 With regard then back to number 68, your letter, your
15 e-mail, you talk about this amount of money regarding two
16 letters of credit, fees for letters of credit
17 2-million-678-plus-change. Why are you talking about that?

18 A. Because what was informed to me is the reduction in the
19 price was based because F.G.G. were finding difficulty in paying
20 for all of the financial costs and hardship. So basically it
21 was agreed that an additional monies would be given to them to
22 offset any hardship in providing all of the financial services,
23 which included the letter of credit.

24 Q. Did you -- did Mitsubishi agree to that?

25 A. To give them additional --

1 Q. To allow more than \$2 million to be withheld from your
2 payment for financing the letters of credit?

3 A. No. No.

4 Q. No. And are you telling them that?

5 A. Basically, yeah.

6 Q. So you've now -- has a discovery been made why you only got
7 11 million instead of 14 million?

8 A. Basically, what we were informed that, and if I can get it
9 right, I think it was informed was that C.F.E., the Comisión had
10 actually distributed the monies accordingly, right.

11 Q. Okay. And you're not saying that you know that was the
12 truth, but that's what you were told?

13 A. That's what I was told.

14 Q. Okay. And you continued to talk a little bit in this
15 e-mail about the monies; is that correct?

16 A. Correct.

17 Q. Okay. What is the real purpose of this letter? Why are
18 you saying Mitsubishi is insecure?

19 A. Well, as I've said before, we're supplying the equipment
20 and we needed payment for that equipment, and because the only
21 guarantee was the equipment, it belonged to us, you know, title
22 and everything belonged to us.

23 Now, once we let that ship, right, because remember
24 this contract was assumed that we would deliver, right, and that
25 portion. When it was ex works, right, that meant somebody else

1 would have to come in to the different factories around the
2 world and take our equipment and take it to Mexico. Well,
3 basically, that was the only collateral, right, insurance that
4 we had is the equipment belonged to us. And because of the
5 payments not coming on time and not coming in the amounts, gave
6 us an insecure feeling and we wanted -- first of all, the
7 collection rights were not there, again.

8 So if we had the direct collection rights on the
9 invoice amounts directly from the Comisión and C.F.E., them
10 being the government of Mexico, gives us a more assured [sic]
11 that we're okay, but the payments coming through from a third
12 party gave me no insurance.

13 Q. I, what are you complaining about?

14 A. Ensure prompt payment of unpaid deficiencies in the first
15 milestone invoice payment.

16 Q. Okay. So that's the missing money, correct?

17 A. The missing money, yes.

18 Q. And I, what are you complaining about?

19 A. Future payments shall be wired directly to M.P.S.A.
20 designate account without any deductions or setups for any costs
21 or expenses currently outstanding, if any, which may arise in
22 the future connection with any financing nn secured on behalf of
23 F.G.G.

24 Q. Okay. Including the letters of credit?

25 A. Yes.

1 Q. Because that was F.G.G.'s responsibility?

2 A. Correct.

3 Q. And then how do you conclude?

4 A. Please be advised that F.G.G.'s failure to deliver M.P.S.A.
5 written confirmation from the Federal Comisión acknowledging
6 that the full amount of all future milestone payments payable to
7 M.P.S.A. will be paid directly to M.P.S.A. pursuant to the
8 assignment of collection rights under the subcontract by the
9 close of business April 23, 2010.

10 Q. And then you were saying -- what will that mean?

11 A. Will be. If it isn't done, will be deemed as a breach of
12 subcontract.

13 Q. Okay. And you sent this to Mr. Gireud; is that correct?

14 A. Correct.

15 Q. And what did you attach?

16 A. Now, the payment schedule annex five.

17 Q. Okay. So what did you attach to this e-mail?

18 A. This was the -- I attached the payment schedule that I was
19 under the impression was agreed by all parties in good faith.

20 Q. Okay. And is it your job to tell the party that it was in
21 breach of contract?

22 A. Yes, because I administrated my subcontract.

23 Q. Okay. You also attached to your e-mail a letter in
24 Spanish; is that correct?

25 A. Yes.

1 Q. Where did you get this letter? Do you recall?

2 A. I don't recall, actually, where I got it.

3 Q. Why did you attach this letter?

4 A. Because as I've said, the -- this was what was told to us
5 that the Comisión had distributed my invoice.

6 Q. Okay. I'm sorry. You were told what, that the Commission
7 disputed your invoice?

8 A. My invoice, right, was there as you see and somebody had
9 then took out all of the financials and charges from my invoice.

10 Q. This?

11 A. Well, here, right, as you see the first payment was that,
12 was 14.493 million. It was supposed to be the payment.

13 Q. Yes.

14 A. Should have gone in our bank.

15 Q. Okay.

16 A. But then we were told that -- if you'd scroll down to the
17 Spanish one, right -- that they deducted the financials, which
18 is 2.6 million, and they deducted 1 million, right, which left
19 only 11.3 million to be paid to Mitsubishi.

20 Q. And what does that have to do with you? You don't have a
21 contract with C.F.E., do you?

22 A. Exactly. That's why I sent the letter to -- I want to be
23 paid my money or Mitsubishi.

24 Q. You said you were told? Who told you by you? By "you," I
25 mean Mitsubishi?

1 A. I think Marco.

2 Q. The date of this letter that was provided to you is what?

3 A. When I look at that, the 30th of March, 2010.

4 Q. Okay. And you notice underneath the date there is a
5 number, correct?

6 A. Yes.

7 Q. Number 20, correct?

8 A. Correct S.T.-20.

9 Q. Okay. And so this was provided to you by someone, right?

10 A. Correct.

11 Q. And basically it explains why you only got \$11 million?

12 A. Well, that was what we were told as the explanation.

13 Q. Okay. And somehow -- so you're sending a letter saying,
14 well, what -- about that retention fee and that \$1 million?

15 A. Yeah.

16 Q. What are you telling F.G.G. about -- they send you this
17 letter saying the Comisión decided to charge a fee for the
18 letters of credit and another million-dollar fee and what are
19 you felling F.G.G. about those fees?

20 A. That's not my subcontract. My subcontract said I needed
21 14.3 million as the first payment.

22 Q. And that's the agreement that you had?

23 A. Correct.

24 Q. Okay. And also that F.G.G., with regard to who's
25 responsible for the letters of credit and the financing of the

1 letters of credit, do you make it clear in the first page, fees
2 for the letters of credit are the responsibility of F.G.G.?

3 MS. FRANCO: Objection, Your Honor, asked and
4 answered. Leading.

5 THE COURT: I'll sustain the leading objection.

6 BY MS. KANOF:

7 Q. What do you make clear regarding the responsibility for
8 those fees?

9 A. Basically, what I'm making clear is that Mitsubishi was due
10 14.3 million with no deductions. All the deductions, if they
11 were true and factual was to the account of F.G.G. not to the
12 account of Mitsubishi.

13 Q. After you sent this e-mail, does Mitsubishi continue to
14 negotiate with F.G.- -- I mean you're saying you're in breach;
15 is that correct?

16 A. Yes. Well, I put a date, I think, if it's not rectified.

17 Q. Okay. As we have e-mails -- oh, by the way, Government's
18 Exhibit Number 69, is that the response to Government's Exhibit
19 Number 68 copied also to you, part of the e-mail chain?

20 Let me show you the bottom so that you can see.
21 That's your original, the bottom of this e-mail?

22 A. Yes.

23 Q. Okay. And Government's 69 are responses and further
24 communications with regard to that e-mail; is that correct?

25 A. That's correct.

1 MS. KANOF: We move Government's Exhibit 69 into
2 evidence.

3 THE COURT: Ms. Franco?

4 MS. FRANCO: No, objection.

5 THE COURT: GX-69 is admitted.

6 BY MS. KANOF:

7 Q. Who is Patrick Altamura?

8 A. He's the leading representative.

9 Q. And does he send a follow-up e-mail to your breach of --
10 your notice of breach of contract?

11 A. Yes, I think he did. Yes.

12 Q. In your notice of breach of contract you gave them three
13 days till April -- did you give them three days?

14 A. I think I gave them a deadline of April 23rd.

15 Q. Okay. Now, in this particular -- in Government's Exhibit
16 Number 69, Mr. Altamura your legal counsel is -- what is he
17 doing?

18 A. We received the documentation required under M.P.S.A.
19 notice sent by Kevin Beddard. So, basically, he's -- from the
20 legal point of view, he's telling them legally he agrees with my
21 statement.

22 Q. Okay. Had Mitsubishi heard, since you had sent your notice
23 of breach, from anyone at F.G.G.?

24 A. Not to my knowledge. I don't know.

25 Q. When Mr. Altamura says, we have tried to reach you by phone

1 several times, did you try to reach anybody by phone?

2 A. I cannot say "yes" or "no," because it was a lot of
3 messages.

4 Q. You don't specifically recall this incident?

5 A. No.

6 Q. Okay. And further when Mr. Altamura says it's imperative
7 they receive documentation, what documentation was he referring
8 to?

9 A. I assume it was the collection rights.

10 Q. Okay. And had -- did you receive it?

11 A. No.

12 Q. Okay. On that same day, does Mr. Altamura send another
13 e-mail to individuals at F.G.G., including copying it to
14 Mr. Delgado and to you?

15 A. Yes.

16 Q. Okay. And was that in response to an e-mail that had been
17 sent from F.G.G. from an individual named Mace Miller?

18 A. Um --

19 Q. I'll go back up, so you can see it.

20 A. It looks like it says Mace Miller review. It looks like a
21 draft.

22 Q. And you are copied on all of these e-mails; is that
23 correct?

24 A. Correct.

25 Q. And why are your copied on the e-mails?

1 A. Basically because they're making an amendment to the
2 subcontract.

3 MS. KANOF: We ask that Government's Exhibit Number 70
4 be admitted into evidence, Your Honor.

5 MS. FRANCO: No, objection.

6 THE COURT: GX-70 is admitted.

7 BY MS. KANOF:

8 Q. What is Mr. Altamura -- who is Mace Miller?

9 A. I don't really know. He's part of the three people at
10 F.G.G. we dealt with. He said he was the attorney. Marco said
11 he was the attorney. I just don't know.

12 Q. Okay. But it does refer to you, an updated draft that we
13 have sent to Kevin or sent to Kevin through Fernando; is that
14 you, Kevin, that they're referring to?

15 A. Yes.

16 Q. What draft? Draft of what?

17 A. Basically, there was being -- an amendment, there had been
18 changes sent forward and red lined, and that looks like Fernando
19 sent the copy the, red line copy directly.

20 Q. What's being amended?

21 A. The subcontract.

22 Q. The original subcontract between F.G.G. and Mitsubishi?

23 A. Yes.

24 Q. Why were they amending it?

25 A. Basically, as I said before, the contract wasn't really a

1 good structured contract, with it, and it was making it more
2 explicit and workable from a project point of view.

3 Q. Okay. And Mr. Altamura then forwards that amended
4 self-contract at the top of this e-mail stream and who does he
5 send it to?

6 A. He sends it to Mace and Fernando Gireud and copies myself,
7 Marco, Ueki-san, a number of people.

8 Q. Okay, with regard to the second paragraph there's somebody
9 referred to as the lending entity, correct?

10 A. Yes.

11 Q. And Mr. Altamura defines the lending entity; is that
12 correct? What's he doing there?

13 A. Basically, I think the under the prime contract for the
14 letter of credit it's going to be a financial --

15 MS. FRANCO: Your Honor, that calls for speculation.
16 He's not the authorized. He's just copied in on it.

17 THE COURT: Well, unless he knows, I'll sustain that
18 objection.

19 BY MS. KANOF:

20 Q. Do you know the importance of that and the meaning of that
21 paragraph?

22 A. I can only speculate.

23 Q. Okay. Then I'll go on.

24 Do you recognize Government's Exhibit Number 72?

25 A. I do.

1 Q. What is Government's Exhibit 72?

2 A. It is the amendment -- the agreed and signed, authorized
3 amendment to the subcontract.

4 Q. Did you have to review and approve it?

5 A. Basically, part of that, yes.

6 Q. You -- you -- I'm sorry?

7 A. Yes.

8 MS. KANOF: We move Government's Number 72 into
9 evidence.

10 MR. HANSHEW: No, objection.

11 THE COURT: GX-72 admitted.

12 BY MS. KANOF:

13 Q. And that's a subcontract, correct?

14 A. The amendment.

15 Q. After the amendment to the second contract or to the
16 subcontract is made, do you receive a letter from Mr. Gireud?

17 A. I did.

18 Q. And is that letter memorialized at Government's Exhibit
19 Number 73? Is that the letter, Government's Exhibit Number 73?

20 A. I can't see the number.

21 Q. I'm sorry?

22 A. I can't see the number.

23 Q. Oh, sorry.

24 A. Yes, it is.

25 MS. KANOF: Move Government's 73 into evidence.

1 THE COURT: Ms. Franco?

2 MS. FRANCO: No, objection.

3 THE COURT: GX-73 admitted.

4 BY MS. KANOF:

5 Q. Yesterday, you talked about a kickoff meeting and the
6 purpose of a kickoff meeting. Who did you need to be
7 communicating with at C.F.E.?

8 A. Basically -- well, not just for C.F.E., to the erection
9 contractor, who was there, a contractor who would do all of the
10 balance of plan to the station and to install the equipment and
11 so if there are any clarifications or they needed technical
12 information from us, right, to do their job of interface design.

13 Q. Now, it's May of 2010. Are you -- do you have a free flow
14 of communication with the people that you need to talk to in
15 order to keep -- get this contract working?

16 A. Yes, it started really well.

17 Q. It did?

18 A. Yes.

19 Q. Were there people assigned to communicate with you?

20 A. Yes, the -- yes.

21 Q. Who was assigned?

22 A. Basically, they were an engineering company. C.F.E.
23 assigned project managers and engineers from Mexico City, with
24 it, also the E.P.C. Their engineering design was called Serna,
25 so, um, they were getting involved. And they had questions

1 because of the elicitation going out with it, so there was a lot
2 of questions going on. And we found that C.F.E. were not happy
3 with Mitsubishi.

4 Q. Could you explain why they weren't happy?

5 A. They've been sending since January request for information,
6 right, to F.G.G. or letters going right away through and
7 actually we had not received them letters.

8 Q. So let me understand this.

9 Are you verbally communicating with the technical
10 people you need to be communicating with?

11 A. That's why we had the meeting for the technical people.

12 Q. And what kind of relationship do you have, your technical
13 people and their technical people?

14 A. Pretty good. When engineers talk with engineers, it's
15 happy.

16 Q. Okay. Language problems?

17 A. They're basically, you know -- drawings are always in
18 English, and the contract, how we subcontract, right, stipulate
19 our technical spec, that all technical correspondence and
20 language would be English. So actually from a technical point
21 of view, it was English, right, was the language.

22 Q. And you said you found out that C.F.E. was upset with
23 Mitsubishi?

24 A. Yes.

25 Q. Why?

1 A. Because they thought we were not answering their questions
2 on a technical basis and we have not received them.

3 Q. And who were they sending them to?

4 A. F.G.G.

5 Q. What happened when you found that out?

6 A. It was agreed at the meeting. Marco was at the meeting.

7 Q. I'm sorry, there was a meeting?

8 A. Yeah, you know, with C.F.E. we had regular meetings.

9 Q. Well, let's go back then.

10 When did these regular meetings start?

11 A. Well basically we had the kickoff meeting, finally, I think
12 sometime in April.

13 Q. Where was the meeting?

14 A. Mexico City. And then from then it was --

15 Q. Who was at the meeting?

16 A. Myself, I took my project engineer, which was John Nest who
17 was the project engineer.

18 Q. Is that N-E-S-T?

19 A. N-E-S-T --

20 Q. Okay.

21 A. -- was my project engineer.

22 Q. Who was there from F.G.G.?

23 A. Marco.

24 Q. Mr. Gireud was not there?

25 A. No.

1 Q. Mr. Miller was not there?

2 A. No.

3 Q. Okay. So, Mr. Delgado was there?

4 A. Correct.

5 Q. Okay. And who was there from C.F.E.?

6 A. Well, who wasn't there from C.F.E.? You know, the -- Marco
7 (phonetic) Campbell was the lead engineer from C.F.E.

8 Q. Okay. Go ahead.

9 A. Mr. Avila, who was the director of all construction of
10 projects was there. The project manager at the time, who was
11 Mr. Baptist (phonetic) -- and there was a multitude.

12 Q. Were there executives from C.F.E. there?

13 A. Well, Avila was the head at a time.

14 Q. You are saying "Avila"?

15 You are saying Avila, A-V-I-L-A?

16 A. Yes.

17 Q. And so it was -- did it go well?

18 A. No.

19 Q. No?

20 A. No.

21 Q. Why?

22 A. Basically, again what I said, they were very angry to us
23 because they thought that we never answered their questions; we
24 never received them. And once that was cleared up, and then
25 they brought the correspondence out and the questions. Some of

1 the questions I could answer straightaway and John Nest could,
2 but a lot of them I had to go back to the technical design
3 people with it. So then we started what we call an action list,
4 right, of all of the topics that we brought them and we
5 formalized it, right, from that day on.

6 Q. In order to alleviate this communication problem, did you
7 make any requests?

8 A. Yes. We asked for the protocols and can we be copied
9 directly on all of these correspondence.

10 Q. Okay. And who did you ask?

11 A. Basically -- well, C.F.E. and Marco, we all agreed at that
12 table we would get the correspondence go directly to us or
13 copied to us. We would get the first part of that and then we
14 could deal with that.

15 Q. Did you?

16 A. Yes. Yes.

17 Q. For how long?

18 A. It went for about a month or so. It had become evident
19 there was a difference in the scope of supply between the prime
20 contract between F.G.G. and C.F.E. and the technical spec
21 subcontract. There was differences. The clarifications did not
22 pass over in the prime, so...

23 Q. Let's talk about that.

24 Yesterday, you looked at a paper and you said there
25 were two serial numbers?

1 A. Yes.

2 Q. And what did you say about those serial numbers?

3 A. Those are technical specifications and that was in our bid
4 to F.G.G. and that was part of the contract with F.G.G., is the
5 annex, which is our technical spec --

6 Q. You contracted with F.G.G. to provide that to C.F.E.?

7 A. Well --

8 Q. You, Mitsubishi?

9 A. Yeah. We provided to F.G.G. and that was our contract with
10 them, I would supply to them as my duty.

11 Q. Okay. And now, what was causing the problem, now?

12 A. Because that was not the clarifications of what we didn't
13 supply was not in and F.G.G. guaranteed or agreed to supply
14 everything, right, so basically that was then; now, problems
15 that who supplied what.

16 Q. Well, let's talk about the clarifications. Why do you have
17 to make clarifications?

18 A. Uh, on the gray market because the equipment is already
19 manufactured, so you've got what you've got. We can't
20 unmanufacture it, right, so we can adapt or tweak to suit, but
21 in some cases, we can't do it because it's not there.

22 Q. Give me an example.

23 A. Their intake system, with it, because of the temperature
24 difference between Brazil, Paricomi, plus six degrees celsius to
25 Agua, minus 19.5 degrees, see, it's freezing. Well, normally in

1 intake systems, if it's cold weather and then the icing system
2 is there, it -- we use warm air to warm the front of the
3 filters, if you like, so, right, it gets warm so we take the air
4 in. And it can't freeze, because if you remember these are
5 outside and the filter system is outside, so you have a freezing
6 day that can ice and it can block and then a catastrophic
7 failure happens.

8 Q. Mr. Beddard, can you give us a specific example -- --

9 A. God.

10 Q. -- instead of the technical example, like on a car or a
11 blackboard or something?

12 THE COURT: Ms. Kanof, hold on. Let's go ahead and
13 take a recess and maybe you can come up with a --

14 MS. KANOF: Oh, he came up with one.

15 THE COURT: Ladies and gentlemen, if you would be back
16 in the jury room at 10:59, I hope to restart our proceedings at
17 11 o'clock. We're in recess for 15 minutes.

18 COURT SECURITY OFFICER HEIDTMAN: All rise.

19 (Jury break.)

20 THE COURT: Ms. Kanof, there's a lot of people in the
21 back. I don't know if they're witnesses.

22 MS. KANOF: They're not.

23 THE COURT: If I could just remind you, the Rule has
24 been invoked.

25 MS. KANOF: I don't see any witnesses, Your Honor.

1 THE COURT: Each counsel is in charge of its
2 witnesses.

3 I thought that was a pretty simple example.

4 (Courtroom laughter.)

5 MS. KANOF: Well, I needed it to be more simple, so he
6 did simplify it for me, but...

7 (Break at 10:48 p.m. to 11:04 a.m.)

8 (Jury present.)

9 THE COURT: Let the record reflect that all members of
10 the jury are present, the United State's assistant attorney are
11 present, the defendant and his counsel is present. The witness
12 Mr. Beddard is in the witness stand.

13 Ms. Kanof?

14 BY MS. KANOF:

15 Q. So, during the break did you figure out a more simple way
16 of explaining this? Maybe I am the only one that needs it, if
17 you could.

18 A. In simpler terms, if you look at what we supply, if you buy
19 a new car, you have additions, you know, what you do extras, and
20 you take the extras you want, with it, the same with a turbine,
21 right, and we take them extras from the specification where it's
22 going, you need this, right, because this was already prebuilt,
23 but that option was not there. So again, it's on the icing one
24 for the filter system, right, could cause blockage to the air
25 coming in this turbine, and if anybody has a car and you have

1 the air filter, you put your hand plus the filter, you block it,
2 the engine stops, exactly the same as turbine.

3 Q. Who wanted an anti-icer?

4 A. C.F.E.

5 Q. And what was the problem?

6 A. Basically, it was not in our specification and
7 clarification said so.

8 Q. Okay. And you found out they didn't have the
9 clarifications?

10 A. Uh, that's when we started that it wasn't -- C.F.E. claimed
11 it was in the prime contract.

12 Q. With regard to communications, you cleared up that
13 initially, and did there come a time again when there were no
14 communications or poor communications?

15 A. Basically, yes.

16 Q. What happened?

17 A. Again, it's these additional additions weren't clarified,
18 not in our specification, but were in the prime contract. So
19 now, C.F.E. wanted them all to be clarified and installed, so
20 there was a lot of, what we say, to and from. My stance was as
21 the project lead, it's up to F.G.G., right, and F.G.G. said, no.
22 It's up to us to do it and C.F.E. So there was a breakdown, if
23 you like.

24 Q. Do you -- you said at the meeting -- at the kickoff
25 meeting, Mr. Gireud wasn't there, correct?

1 A. Correct.

2 Q. Okay. Mr. Delgado was there?

3 A. Correct.

4 Q. At the technical meetings, who, if anyone, would go to the
5 technical meetings from F.G.G.?

6 A. Marco Delgado.

7 Q. And do you know what he does for a living?

8 A. Yes.

9 Q. What?

10 A. Well, it's attorney.

11 Q. And do you know what Fernando Gireud did for a living?

12 A. I knew him from the El Paso power. I think he was a V.P.

13 Q. At El Paso Electric Company?

14 A. That's it.

15 Q. Do you know what his education is or background?

16 A. No.

17 Q. He was not at the meetings?

18 A. No.

19 Q. All right. Did Mr. Delgado attend all of the meetings?

20 A. Um --

21 Q. The technical meetings, I'm talking it.

22 A. Yes.

23 Q. And did he participate?

24 A. Yes.

25 Q. In what manner did he participate?

1 A. I don't know how I can put this; gagging me, I think.

2 Q. I'm sorry?

3 A. Telling me to keep quiet.

4 Q. Why did he tell you to keep quiet?

5 A. Because of these differences.

6 Q. An example, do you have any recollection of what he told
7 you to keep quiet?

8 A. Basically, yeah, there was meeting where the anti-icing
9 come up, the code of order, differences come up. The fuel gas
10 temperature come up. There was a list, right.

11 Q. And who had drawn up this list?

12 A. Basically, the project managers of C.F.E.

13 Q. All right. And what was going on with regard to the list
14 at this meetings?

15 A. Basically, who's going to supply it.

16 Q. Who was present other than you and Mr. Delgado?

17 A. The C.F.E.

18 Q. C.F.E. technical people or --

19 A. Yes, project manager.

20 Q. What is a project manager, just...

21 A. Well, project manager runs the project. He manages the
22 project. So he's the same as me; administers the contract, his
23 contract.

24 Q. And they had -- did they give you the list directly?

25 A. No. It was in the -- as I said, we did an action item

1 list, so they're asking for clarifications, information, and
2 with our responses, right, we said that is not in our scope of
3 supply, that's where they got the list from.

4 Q. Okay. So, when do you first start to have disagreement?
5 You mentioned something about an anti-icer?

6 A. Yeah, that was just one of the out of our scope -- not in
7 our scope to supply, right.

8 Q. It's one of those things that's not part of the turbine?

9 A. Correct.

10 Q. Okay. And was that part of the specification that was in
11 the subcontract?

12 A. Basically, the omittance of that was in the subcontract.

13 Q. Okay. And should it have been provided to C.F.E.?

14 A. Basically, for that temperature range, yes.

15 Q. Did you provided it to F.G.G. to provide it to C.F.E.?

16 A. No, because we couldn't.

17 Q. No, I mean, did you provide the absence of that?

18 A. Oh, yes, yeah.

19 Q. Okay. That you didn't meet that specification?

20 A. Correct.

21 Q. Okay. And so what happened at this meeting when you
22 started to bring it up?

23 A. Um --

24 Q. What did you say about it?

25 A. Well, the case is we can provide, now, but it's very

1 difficult, but there's going to be additional costs, right.
2 Technically, right, it's not an ideal situation, because at the
3 design stage of manufacturing, we can install, as I said
4 (indiscernible). When it's manufactured, especially on the
5 icing, you need a heat source, right, you need to get the heat
6 from somewhere. Normally, when we do it at the beginning in the
7 design, the heat comes off the compressor side of the turbine,
8 right, and we have valves in there and sends it out, because
9 that wasn't there. All of this wasn't there.

10 So then we have to look at -- it would have to be
11 another heat source, right. So we first asked the question,
12 right, what heat source could you give us that we can send to
13 the filter system and we would make a grid system from the
14 filter to supply that turbine.

15 Q. Who asked that question?

16 A. I did.

17 Q. And what did Mr. Delgado do; if you can recall?

18 A. I cannot recall.

19 Q. Okay. What happened next?

20 A. Basically, the next part was that C.F.E. said one of the
21 heat sources I suggested was not there. So again it was left in
22 limbo, right, so we kept asking, is anybody going to clarify
23 this to us and can we develop an engineering solution and who's
24 going to pay it, right, with it.

25 Q. Okay. And was a request made of you after this meeting by

1 Mr. Delgado?

2 A. Yes.

3 Q. What did he ask you to do?

4 A. He asked me at dinner that I give him a simplistic view of
5 everything, with it, so he is fully familiar with it and he'll
6 discuss that with C.F.E.

7 Q. Did he ask you to do it in any particular manner?

8 A. Uh, and I was not to speak directly with C.F.E.

9 Q. Okay. And did he tell you whether or not you could
10 provide -- how were you supposed to give him that information
11 and in what form?

12 A. Basically, I stopped the conversation then.

13 Q. Okay. But could you do it publically? Could you discuss
14 it with Mr. Gireud?

15 A. But he wasn't there.

16 Q. Well, okay.

17 Did Mr. Delgado -- in what manner did he ask you to
18 provide it to him, publicly or privately?

19 A. Well, it was at dinner with my engineers, so...

20 Q. Okay. What did you tell him with regard to his request for
21 you to provide him a simplified list?

22 A. No.

23 Q. And how did he react?

24 A. What can I say?

25 Q. The truth.

1 A. Not nicely.

2 Q. Describe his demeanor.

3 A. Forceful.

4 Q. I'm sorry?

5 A. Forceful demeanor.

6 Q. Okay. Did he raise his voice?

7 A. To my knowledge, yes.

8 Q. Was there anybody else present?

9 A. Yes, my engineers.

10 Q. Your engineers were present?

11 A. And I think his wife.

12 Q. Mr. Delgado's wife?

13 A. Well, that's what -- I was introduced as is.

14 Q. Okay. And had you seen that behavior before?

15 A. Once or twice.

16 Q. Under what circumstances?

17 A. With C.F.E.

18 Q. You said that C.F.E. provided a project manager to the

19 project; is that correct?

20 A. Correct.

21 Q. Do you recall the name of the project manager?

22 A. The first one, I don't. The second one was Baptist.

23 Q. How much project managers were assigned?

24 A. I had just finished the project and I had five.

25 Q. Is that common?

1 A. No.

2 Q. Why did you have so many project managers -- when five, is
3 that serial or all at once?

4 A. That was at the time. The first between January and, I
5 think, May, we had three.

6 Q. Okay. And do you have knowledge of why they were removed?

7 A. I can only say what I was told.

8 MS. FRANCO: Objection, Your Honor. Calls for
9 hearsay.

10 MS. KANOF: If the defendant told him, by whom?

11 THE COURT: Wait, wait. Okay. Hold on a second.
12 Let's identify who said it.

13 MS. KANOF: Yes.

14 BY MS. KANOF:

15 Q. Who told you?

16 A. C.F.E.

17 Q. Okay. At the time that you were going through this process
18 of trying to work with the technical people, was there -- were
19 there any dates important to you?

20 A. Yeah, actually, the delivery date is still a problem
21 because I've still got to get alls of the refurbishment.

22 Q. Did you have a delivery date? This is already -- we're
23 already going into May, right?

24 A. No.

25 Q. No? And did you ask for a delivery date?

1 A. Yes.

2 Q. And who did you ask?

3 A. Both F.G.G. and C.F.E., when they needed it.

4 Q. And who did you ask for F.G.G.?

5 A. Well, that was Marco.

6 Q. And what would he respond when you were asking for delivery
7 date?

8 A. He has to get with his logistics people and everything.

9 Q. His logistics people?

10 A. The people picking up the turbine and all of the equipment
11 from the different locations in the world.

12 Q. Did he indicate to you that he had people that were going
13 to do those things?

14 A. Initially, he said he was in negotiations and roundabout
15 and it could've been May. He brought a company to one of the
16 meetings with C.F.E.

17 Q. Okay. Do you remember who that company was?

18 A. I can't remember the name of the company, but when I said
19 that we have to have review them, right --

20 Q. You have to review that company; is that --

21 A. Well, remember, it's our turbines and we've got to make
22 sure that they're lifting plans, the lift and the equipment and
23 how they're putting it onboard and the packaging and for
24 shipment is correct, so no damage comes to the equipment, and
25 also that they're a reputable company and have done this

1 throughout the years, they're experienced, right.

2 Q. So this company that showed up with Mr. Delgado, were they
3 ever presented to you as the contracted-for-company that would
4 do that?

5 A. That's why I came to the meeting, right.

6 Q. And then what happened at the meeting?

7 A. I asked them the questions, have you ever, like, delivered
8 turbines, transported turbines; they said, no. I said, well,
9 what heavy equipment have you done, and they said they moved a
10 bottling plant once.

11 Q. A bottling plant?

12 A. Yes.

13 Q. And was that sufficient to protect your turbines?

14 A. No.

15 Q. So did you reject them or what happened with regards to
16 them?

17 A. I discussed I said we should look for a more experienced
18 company, because you got to look at insurance, right, with this.

19 Q. Who would have to insure it?

20 A. Basically, we would have to be named insurer on that,
21 because we are not doing that, it's not part of our contract,
22 but that still belongs to us, right.

23 Q. So would you insure a moving company that had already moved
24 a bottling plant?

25 A. I would not, personally, no.

1 Q. Would you recommend to Mitsubishi that they do so?

2 A. I would not.

3 Q. With regard to -- and who did you tell at F.G.G. that they
4 needed to find a more experienced company?

5 A. Marco Delgado.

6 Q. And how did he respond?

7 A. I -- took it under advisement.

8 Q. Did you have get a delivery schedule?

9 A. I actually made one myself.

10 Q. No. I asked the question, did you ever receive a
11 delivery --

12 A. No, I didn't.

13 Q. Okay. Well, how could you make a delivery schedule
14 yourself if everything was so up in the air?

15 A. Because what I had to do was then to C.O.D. with C.F.E. was
16 still there. That hadn't moved.

17 Q. From the original contract?

18 A. Yes.

19 Q. So you tried to make estimates based on the original
20 contract?

21 A. Basically, I would work back from that and then I produced
22 dates and send it, do agree with these dates as the dates for
23 embarkation, and then with that dates, I backdated it from there
24 to refurbishment, et cetera.

25 Q. Did anything happen that ended your friendly communications

1 was C.F.E. at this point?

2 A. Yeah, I received a letter straight after that meeting, I
3 think it was the next day, from Mr. Gireud.

4 Q. The next day after what?

5 A. The meeting that we had with Marco at dinner when he asked
6 me to give him all of that information.

7 Q. Okay. And after you refused, you received a letter; is
8 that correct?

9 A. Correct.

10 Q. I'll ask you to take a look at Government's Exhibit
11 Number 74. Oh, I'm sorry. Yes, 74. You need to look at the
12 number?

13 A. Yes.

14 Q. Okay. Is that an e-mail? Who's it from?

15 A. From me to Gireud.

16 Q. And what is it regarding?

17 A. The letter that I received, I think. I think this is a
18 reply to a letter I received.

19 Q. Okay. And is -- let me let you look at number 73. Is that
20 the letter that you received, Government's Exhibit Number 73?

21 A. Yes.

22 MS. KANOF: We'd ask that Government's Exhibit Number
23 73 and 74 be admitted into evidence.

24 THE COURT: I show 73 is already in there.

25 MS. KANOF: Oh, I'm sorry, Your Honor.

1 BY MS. KANOF:

2 Q. Let's look at number 73 first.

3 A. (Complies.)

4 Q. Mr. Beddard, you received a letter and who was it from?

5 A. If I recollect, it was from Fernando Gireud.

6 Q. I'll scroll down so you can see it, if this will stop.

7 A. Yeah.

8 Q. And what was the date of this letter that?

9 A. That was the 7th of May.

10 Q. And you said it was the next day after you refused to give
11 Mr. Delgado the --

12 A. When we had the conflict, yes.

13 Q. Okay. And had you been communicating Mr. Gireud?

14 A. Only on official communications, right, because he was the
15 protocol.

16 Q. He was on your protocol?

17 A. Yes.

18 Q. And what -- what did he communicate to you in this letter?

19 A. Basically saying that I haven't communicated with C.F.E.
20 and direct all communication direct to F.G.G.

21 Q. Okay. And what does he tell you about Mexican counsel?

22 A. I took that as Marco.

23 Q. Okay. When he -- I'm highlighting a section -- when he
24 says, per counsel's instruction, please, direct all
25 communication to F.G.G., what counsel did you think he was

1 talking about?

2 A. Marco.

3 Q. Okay. And did you understand what he meant by that when he
4 sent you that letter?

5 A. Basically, I took it that he didn't want me to talk to
6 C.F.E.

7 Q. And does he tell you that?

8 A. Well, it says F.G.G. will conduct all communications for
9 C.F.E. as related to any issues which are potentially
10 problematic as F.G.G.

11 Q. So immediately after that, did he send him the e-mail that
12 is Government's Exhibit Number 74?

13 A. Yes.

14 Q. Okay. And you sent it again out of protocol?

15 A. No. I sent it basically not on the official mail. I just
16 wanted to have a clarification am I correct.

17 Q. And you didn't have any other attorney -- well, who did you
18 call?

19 A. I talked with Mace Miller, right, Patrick, who's --
20 Mr. Altamura is our lawyer -- Marco and Rick Williamson.

21 Q. Okay. And what did you ask about?

22 A. I just wanted a clarification.

23 MS. FRANCO: Objection, Your Honor. It hasn't been
24 admitted yet.

25 MS. KANOF: I moved for admission. I thought the

1 Court had admitted it. I'm sorry.

2 THE COURT: 74?

3 MS. KANOF: Yes.

4 MS. FRANCO: No, objection.

5 THE COURT: GX-74 is admitted.

6 BY MS. KANOF:

7 Q. Okay. Let's start again, now that the jury can see it.
8 What was the date of this e-mail?

9 A. The 8th of May.

10 Q. Okay. And who did you copy on the e-mail?

11 A. I copied Mace Miller, Patrick Altamura, Marco Delgado and
12 Rick Williamson.

13 Q. What's the purpose of this e-mail for clarification and
14 what it means by direct communications between C.F.E. and
15 M.P.S.A.

16 Okay. In the middle sentence, what do you ask for?

17 A. Can you please inform me your technical representative so
18 that we can have direct contact on information clarifications.

19 Q. Did he ever provide you a direct technical representative's
20 name from F.G.G.?

21 A. Later on, yes.

22 Q. Okay. But at this time?

23 A. No.

24 Q. Okay. When did they provide you with the name of a
25 technical representative?

1 A. To be honest, I can't remember when.

2 Q. Was it later?

3 A. It was later, yes.

4 Q. Okay. And that technical representative, did you work with
5 him?

6 A. He turned up at the meetings and then he asked for
7 communications to go to him.

8 Q. Okay.

9 A. So, yes, we were working with him.

10 Q. Later on?

11 A. Yes.

12 Q. Okay. But for a while, Government's Exhibit Number 75, do
13 you receive an e-mail from Mr. Gireud -- this is very
14 frustrating -- if you would look at Government's Exhibit
15 Number 75 and identify if that is an e-mail to you?

16 A. Yes.

17 Q. And who is it from?

18 A. Well, actually it's not just to me.

19 Q. You see the exhibit number, so you can be sure. And -- but
20 it is to you and others; is that correct?

21 A. Yes, that's correct.

22 Q. And who is it from?

23 A. It's from Fernando Gireud.

24 Q. And what -- how is it dated?

25 A. May the 10, 2010.

1 MS. KANOF: We'd ask that Government's Exhibit
2 Number 75 be admitted.

3 MS. FRANCO: No, objection.

4 THE COURT: GX-75 is admitted.

5 BY MS. KANOF:

6 Q. Okay. With regard to this e-mail, if you scroll down to
7 the bottom, it appears that you had sent an e-mail earlier about
8 assignment of collection rights; is that correct?

9 A. Correct.

10 Q. Okay. And the e-mail that you had sent earlier was
11 regarding -- what were you demanding with regard to the
12 assignment of collection rights?

13 A. That we were given written confirmation that this process
14 was end -- with the end user and we would eventually get it.

15 Q. And you had made that request on April 20th; is that
16 correct?

17 A. That's the date on that letter, yes.

18 Q. And you referred to the Assignment of Collection Rights
19 Section 15, right?

20 A. Correct.

21 Q. In the contract?

22 A. Correct.

23 Q. Did you send the e-mail on May 10th?

24 A. Correct.

25 Q. All right. And you referred to your e-mail of April 20th

1 in the May 10th, correct?

2 A. Correct.

3 Q. And Mr. Gireud responds to you and who does he copy?

4 A. He copies himself and Mace Miller.

5 Q. And who else?

6 A. Well, he sends it to me, himself, Mace Miller and Marco
7 Delgado.

8 Q. And who -- you're Kevin, right?

9 A. Yes.

10 Q. In he regards to his international counsel, who does he say
11 that is?

12 A. Delgado and Associates.

13 Q. Okay. Did you ever deal with anybody other than
14 Mr. Delgado?

15 A. Not to my knowledge.

16 Q. As an attorney, do you know if he had associates?

17 A. I don't really know.

18 Q. And what is he asking you regarding the Assignment of
19 Collection Rights? What is he telling you?

20 A. Actually, the acknowledgment of the Federal Comisión of
21 the Assignment of Collection Rights.

22 Q. Okay. You had asked for --

23 Basically, what had to happen, they had to ask C.F.E.,
24 correct?

25 A. Yes.

1 Q. And you're just asking them to ask C.F.E., right?

2 A. Not just asking, but a written request in, right, to them.
3 I believe it was a formality.

4 Q. Okay. And the last paragraph he addressed the
5 communication issue, correct?

6 A. Yeah, he's asking me to abstain from any and all direct
7 contact with F.G.G. until such time that F.G.G. advises
8 otherwise.

9 Q. And who does he tell you to direct everything to?

10 A. All communication questions, requests, responses need to be
11 addressed to me, Fernando Gireud, with a copy to Marco Delgado.

12 Q. Okay. So that -- that occurred on what date?

13 A. May 10, 2010.

14 Q. Okay. After that, do you receive an e-mail, Government's
15 Exhibit Number 78, or do you -- or do you send an e-mail,
16 Government's Exhibit Number 78. Let me get the number for you.

17 A. 78, yes.

18 Q. I'm showing you the exhibit number so you can verify.

19 A. Yes.

20 Q. Okay. And is that originating from you?

21 A. Yes, from.

22 Q. And who is it to?

23 A. That one is to Marco Delgado.

24 Q. And what is it regarding, the subject matter?

25 A. It looks like on the balance 100 percent.

1 Q. And the date?

2 A. The 13th of May.

3 Q. Okay.

4 MS. KANOF: We'd move Government's Exhibit Number 78
5 into evidence, Your Honor.

6 THE COURT: Ms. Franco?

7 MS. FRANCO: No, objection.

8 THE COURT: GX-78 is admitted.

9 BY MS. KANOF:

10 Q. Okay. Starting at the bottom of the e-mail chain, which is
11 actually in Spanish -- do you speak Spanish?

12 A. No.

13 Q. Who's Eduardo Espinosa?

14 A. He was the second project manager.

15 Q. And so Mr. Espinosa appears to have sent you an e-mail; is
16 that correct?

17 A. Yes, he does.

18 Q. Do you know whether he sent it directly to you? Did you
19 receive an e-mail from him?

20 A. I believe, yes, if that's --

21 Q. But did you respond to it?

22 A. Not directly.

23 Q. He sent you an e-mail, but who did he copy?

24 A. Marco Delgado, Marco Campbell, who was the engineer for
25 C.F.E., Benjamin Ramirez -- I can't remember who Benjamin was.

1 Q. Okay. And you were not allowed to respond, correct?

2 A. Yes, by the previous letters.

3 Q. Okay. He sent that e-mail on May 12th, so on May 13th, who
4 did you send an e-mail to?

5 A. Marco Delgado.

6 Q. And the first line of your e-mail says what?

7 A. Dear Eduardo --

8 Q. No, before. Oh, yes. Go ahead.

9 A. Dear Eduardo, on instruction from Marco Delgado, we can't
10 answer you.

11 Q. So how did you get permission from Mr. Delgado?

12 A. I must have talked to him.

13 Q. So you are making your technical responses through
14 Mr. Delgado; is that correct?

15 A. With his permission.

16 Q. With his permission.

17 Also on May 13th, this required two different
18 responses. Again, did you accept an e-mail on that same day
19 inquiring Mr. Delgado's permission to respond to Mr. Espinosa?

20 A. Correct.

21 Q. Did you have a bad relationship with Mr. Espinosa?

22 A. No, it was great.

23 Q. It was great?

24 A. It was a great one.

25 Q. Okay. Did having to have an intermediary cause any

1 problems?

2 A. Of course, yeah.

3 Q. Well, what do you mean by "of course"?

4 A. An engineer to an engineer can talk, right, technical
5 person to technical person can talk, right. When you put a
6 third party to talk through, things get changed. And as I was
7 talking about, the technical was in English, so ours would be
8 English. And then you didn't know, things get lost in
9 translation, you don't know what the interaction is, how they've
10 described it, so you can lose technical when commercial or legal
11 get involved.

12 I mentioned that earlier on, was this is one of the
13 reasons why on our official mail it went to the V.P. of
14 Commercial, Mr. Ueki, but he asked why I then had to approve it?
15 Well, I had to check it, that any decision on a commercial
16 thing, I can change the technical side. So again, this is, you
17 know, the same thing. I don't know, right, what's being said
18 outside. And we, from the first amendment, right, were in
19 charge of the project. It stated that and that was one of the
20 reasons we accepted in project to go ahead with this project,
21 because we have the right to manage the project. It was in
22 there nobody signed that and now it had been taken away.

23 Q. Okay. So looking at Government's Exhibit Number 79. Let
24 me pull up the number for you, so you can verify it. Is that --
25 do you recognize this as an e-mail communication from you?

1 A. Yes.

2 Q. On May 14th of 2010?

3 A. Correct.

4 Q. And who is it to?

5 A. Fernando Gireud.

6 Q. And is it copied, among many other people, to Marco
7 Delgado?

8 A. Yes, Marco is on there.

9 MS. KANOF: We move admission of Government's Exhibit
10 Number 79.

11 THE COURT: Ms. Franco?

12 MS. FRANCO: No, objection.

13 THE COURT: GX-79 is admitted.

14 BY MS. KANOF:

15 Q. This is -- do you recognize this? You might need to take a
16 look at it. It's pretty complicated.

17 MS. KANOF: May the witness have a moment, Your Honor,
18 to review?

19 THE COURT: Yes, ma'am.

20 A. Can you scroll?

21 BY MR. KANOF:

22 Q. Oh, you need for me to. I thought you could do it from
23 there. Okay.

24 Do you recall this now?

25 A. Yes.

1 Q. So, on May 12th, did you receive a letter from Mr. Gireud
2 regarding communication with C.F.E.?

3 A. Yes.

4 Q. And what precipitated the letter from looking at it?

5 A. Basically, the clarification is going nowhere again and the
6 project still has to go forward, so again I'm asking for
7 additional clarification regarding F.G.G. correspondence. And
8 I've put the -- number one, appropriate water temperatures, two,
9 the solar field connection and, number three, the requirement
10 for deicing equipment.

11 Q. And in this letter are you asking for the right to directly
12 discuss it with C.F.E.?

13 A. Well this letter is from them to me, Dear Kevin, which is
14 not my letter.

15 Q. What are they telling you about the communication?

16 A. So that's the same, per my request for additional
17 clarification regarding F.G.G. correspondence on May the 7th
18 regarding the reference topics, the three I just mentioned, the
19 following items should be exclusively discussed directly with
20 F.G.G. and not C.F.E.

21 Q. Okay. You had indicated before that you had -- that this
22 all started when you refused to put something simple in writing
23 for Mr. Delgado, correct?

24 A. Correct.

25 Q. On the second paragraph after the three numbers, does it

1 require you to put in writing all technical issues, and then
2 what else does it inquire?

3 A. Basically, it's a detailed examination will be performed in
4 order to assert by all parties obligated to the related issues.
5 In assisting with our examination, please describe in writing
6 the technical issues and direct F.G.G. to applicable
7 specification clause.

8 Q. Okay. So direct to the applicable bill bid specification
9 clause?

10 A. Correct.

11 Q. And what else?

12 A. Basically, to go in the contract clause between F.G.G. and
13 M.P.S.A. subcontract clause.

14 Q. Okay. But the bid specification clause, the proposal, and
15 what else?

16 A. Which relates to the technical issues which in M.P.S.A.'s
17 opinion determines responsibility party for the equipment or
18 solution.

19 Q. Okay. So does this cause a delay?

20 A. Yes. If it's not decided, right, if agreement on technical
21 issues which are directly on the critical part of a project,
22 yes, it will cause delays. You can only do so many workarounds,
23 right, but these were fundamental to the project.

24 Q. This sentence here it lists a lot of things they want you
25 to include in the writing. It also lists F.G.G. FIDE Comisión

1 contract clause. Did you have anything to do with the F.G.G.
2 FIDE Commisión contract?

3 A. No.

4 Q. Did you have the F.G.G. FIDE Commisión contract?

5 A. No.

6 Q. Is that is no?

7 A. No.

8 Q. By FIDE Commisión we're talking about the C.F.E. contract,
9 right?

10 A. Right.

11 Q. So how are you going to put that in writing if you didn't
12 have that contract?

13 A. I don't know.

14 Q. So did you have communication problems as a result of the
15 fact that the contract had never been provided to you?

16 A. Yes. If there was a constant -- cause problems, because
17 C.F.E. engineering, right, when they ask for technical
18 information, they would always identify a page number of their
19 contract, right. So let's say according to page 391, right, of
20 our contract of supply, you have to give us a box of chocolates,
21 right, so I take my subcontract technical document, which I
22 thought was passed over, right. I go to page 391 and it's a bag
23 of all sorts. And I'm thinking, well -- and then I have to go
24 back to C.F.E., could you please expand on this, because my
25 technical spec and your technical spec are not matching on page

1 numbers. Could you give me a more detailed. So then they would
2 after then, send me a more detailed explanation of that.

3 Q. Did you ask for the F.G.G.-C.F.E. contract?

4 A. Yeah, many times.

5 Q. Who did you ask?

6 A. Marco.

7 Q. And did you ever get it?

8 A. No.

9 Q. What would he say when you asked for a copy of the
10 contract?

11 A. He said, basically, Hector and John walked from my office
12 with bags of it, you know, so you've got it in your --

13 Q. Did you ask Hector and John for a copy?

14 A. John said he never did that.

15 Q. I'm sorry? John said what?

16 A. He never received, right.

17 Q. So -- and Hector?

18 A. And Hector said --

19 MS. FRANCO: Objection, Your Honor. Hearsay.

20 BY MR. KANOF:

21 Q. Did you ever get a copy?

22 A. Basically, no not of that full contract, no.

23 Q. So, basically, were you able to communicate in this way?

24 A. Technical people work around things and -- if everybody has
25 a will to go forward with a project, we manage work around this,

1 right, with it. Is it efficient? No. It's definitely not
2 efficient.

3 Q. Is this -- in this e-mail you talk about the e-mail of
4 May 14th, Government's Exhibit Number 79. Is this -- what is
5 this with regard to your permission or the manner in which you
6 had to communicate with C.F.E.?

7 A. Well, please be informed during the technical meeting for
8 C.F.E., an issue of location of the emission of the solar field
9 12 megawatt in all steam turbine. What it was, was part of the
10 Agua project. There was a solar field, which is separate from
11 our project, but it fed in steam into our project. And C.F.E.
12 wanted to put that steam directly into our gas -- our steam
13 turbine, which was a no-no. We said, no, you cannot do that
14 because the temperature is too low to go into the turbine. You
15 must put that through the H.R.S.G. and get the temperatures up
16 so we can supply that. So we were saying, you know, 12
17 megawatt, right, we would incorporate that on our balanced
18 diagrams as 12 megawatt of duct firing, hypothetically, with you
19 telling us where the connection is going to go. It's not going
20 to go into our steam turbine.

21 Q. You're doing it in writing -- you're sending this in
22 writing to Mr. Gireud?

23 A. Correct.

24 Q. Copying it to a whole bunch of people in response to
25 questions that C.F.E. has asked you?

1 A. Correct.

2 Q. So, for example, item two of your letter that shows that
3 you are specifically responding to a communication?

4 A. Yes.

5 Q. And who provided this C.F.E. letter to you?

6 A. I think it came from Mr. Gireud or Marco sent it, forwarded
7 it.

8 Q. Okay. Meeting conclusion? What meeting are you referring
9 to?

10 A. That would be the technical meetings where we had -- as you
11 can see, this is the action item list, which is a -- action
12 item, each question or issue, we give a specific number to, so
13 then we could track the progress and whether it was closed or
14 not. So that was the first one here is item 31. And actually
15 C.F.E. closed that item. They agreed with us they would not put
16 the steam, right, into the steam turbine. They would go and put
17 it through the H.R.S.G.

18 Q. Okay. And was this the meeting you talked about that ended
19 in the dinner that caused problems?

20 A. No.

21 Q. No? This was a different meeting?

22 A. Yeah.

23 Q. So what happened at the meetings that you had after that if
24 you weren't allowed to communicate directly with C.F.E.?

25 A. Basically, we still had some meetings. It still had to go

1 on. And we were told whether we could answer or not answer.

2 Q. I'm sorry?

3 A. We were informed that the meeting, if we could answer or
4 not answer.

5 Q. Explain how that occurred.

6 A. Well, basically, we go through the question and then,
7 basically, Marco or another gentleman, I can't remember his
8 name, Henders (phonetic), I think, was assigned.

9 Q. You are saying Andres, A-N- -- Andre?

10 A. No. Hernandez.

11 Q. Hernandez?

12 A. Hernandez.

13 Q. Right.

14 A. He would say, no, we'll come back to you. I'll get advice.
15 We'll answer you later. So that was left in or please go ahead
16 and answer that question.

17 Q. Government's Exhibit Number 80 in front of you.

18 Are these e-mails -- this exhibit, does it have two
19 e-mails from you?

20 A. Yes.

21 Q. And are they to Mr. Delgado?

22 A. Yes. The first one and the second one is, too.

23 MS. KANOF: Move -- make a motion to move Exhibit
24 Number 80 into evidence, Your Honor?

25 THE COURT: Ms. Franco?

1 MS. FRANCO: No, objection.

2 THE COURT: GX-80 is admitted.

3 BY MS. KANOF:

4 Q. Again, are these e-mails where you have to ask permission
5 of Mr. Delgado do discuss technical things with Mr. Espinosa?

6 MS. FRANCO: Your Honor, leading.

7 THE COURT: Sustained.

8 BY MS. KANOF:

9 Q. Of what are these e-mails?

10 A. Basically, again because we had been given a gag order, we
11 can't talk directly technical to a technical. We have to go out
12 and get permission, right. So then I have to get permission, I
13 get permission, then I put it down on the e-mail on instruction
14 from Marco, I'm allowed to talk directly to you.

15 Q. Government's Exhibit Number 81. What is this?

16 A. That is another letter from me to Delgado. Again it's on
17 the instruction of Marco Delgado: We can submit the following
18 directly to you. There's another letter in there.

19 Q. On a different date; is that correct?

20 A. Yeah, it's -- again, I'm sending you a copy of the updated
21 action item list. So I'm giving him an update, right, of where
22 these items are and the status of them.

23 MS. KANOF: Move admission of Government's Exhibit
24 Number 81 into evidence.

25 THE COURT: Ms. Franco?

1 MS. FRANCO: No, objection.

2 THE COURT: GX-81 is admitted.

3 BY MS. KANOF:

4 Q. How long did that go on?

5 A. Too long. I can't remember.

6 Q. All right. At some point in time, did you send another
7 invoice for another payment?

8 A. I did.

9 Q. You did. I'm going to show you Government's Exhibit
10 Number 82 for your identification.

11 A. Yes.

12 Q. And is that the e-mail with invoice that you delivered
13 through the e-mail system to F.G.G.?

14 A. Yes.

15 MS. KANOF: We move Government's Exhibit 82 into
16 evidence.

17 THE COURT: Ms. Franco?

18 MS. FRANCO: No, objection.

19 THE COURT: GX-82 is admitted.

20 BY MS. KANOF:

21 Q. Okay. So on May 18th of 2010, do you send another e-mail
22 with invoice attached?

23 A. I do.

24 Q. Okay. And who do you send it to?

25 A. Again as protocol, I send it to Mr. Gireud.

1 Q. And is Mr. Gireud copied?

2 A. He will be -- I can't -- yes, he is. I see it.

3 Q. And what do you tell them?

4 A. Please find attached a copy of the reference invoice. The
5 original, we sent by courier on the 18th May 2010. Can you
6 please review the invoice submittal and then inform if you have
7 any further feedback documentation.

8 Q. Do you have an independent recollection of what the date of
9 the second payment was supposed to be?

10 A. I can't remember the payment schedule. It's on the payment
11 schedule.

12 Q. Scrolling down to your attachment, is that your
13 signature --

14 A. That is my signature.

15 Q. -- on the attachment to Government's Exhibit Number 82?

16 A. Correct.

17 Q. And is this your invoice?

18 A. Yes.

19 Q. And does it reference what you're expected date is?

20 A. Yes. It says and the payment by due date of the 6th of
21 July, 2010.

22 Q. Where did you get that date?

23 A. It would be the payment schedule.

24 Q. I'm sorry?

25 A. The payment schedule from the first amendment.

1 Q. Okay. The contract of the first amendment?

2 A. Yes.

3 Q. And just briefly, we had -- we were talking about the first
4 amendment. Now that we're talking about the first amendment
5 again, now you're getting your information from the first
6 amendment instead of the original subcontract, correct?

7 A. No, the first amendment would have changed said clause is
8 in the subcontract, so it's amalgamated, but it takes
9 preference.

10 Q. And with regard to that first amendment, I'm going --
11 looking at Government's Exhibit Number 72 --

12 MS. KANOF: Is that admitted, because the 72 in --

13 THE COURTROOM DEPUTY: Yes.

14 BY MS. KANOF:

15 Q. Regarding to Government's Exhibit 72, when that amendment
16 was written, did you attempt to solve some of these
17 communication problems with language in that amendment?

18 A. Oh, yes. Yeah.

19 Q. Okay. What did you attempt to write into that contract
20 communication?

21 A. Yeah. Basically it's project management. As I said
22 before, we didn't have any structure for this subcontract. And
23 this clause that was put in was project management, which is
24 said that M.P.S.A. will spearhead all aspects of the scope of
25 work to be furnished under the subcontract. F.G.G. will

1 facilitate and the establishment of an efficient line of
2 communication between all parties based on C.F.E.'s and
3 M.P.S.A.'s experience and recommendations.

4 Q. Okay. I notice you don't say F.G.G.'s experience and
5 recommendations, correct?

6 A. Correct.

7 Q. And the date of the signatures on this first amendment were
8 what?

9 A. April 23, 2010.

10 Q. The e-mails that I was showing you, what month were they
11 in, if you recall?

12 A. May.

13 Q. So did it help putting that information in there?

14 A. Not really.

15 Q. Would you call having to ask permission every time you
16 wanted to talk to Mr. Espinosa facilitating sufficient
17 communication?

18 A. No, I do not.

19 Q. With regard to your invoice, Government's Exhibit Number
20 82, you expected payment -- I think you said you expected
21 payment on what date?

22 A. July the 6th.

23 Q. And how much money did you expect?

24 A. 7 million U.S. dollars.

25 Q. And how did you proceed to invoice?

1 A. Basically, I put the invoice as normal, with it, and
2 putting the said clauses in for the accordance of the signing of
3 collection rights by F.G.G. to M.P.S.A. set forth in clause, et
4 cetera, et cetera, that we get correct payment.

5 Q. Are you referring to this box again?

6 A. I am.

7 Q. And do you have assignment of collection rights, yet?

8 A. No.

9 Q. And this is dated May 18th?

10 A. Correct.

11 Q. Do you also inquire wiring instructions again?

12 A. Yes.

13 Q. And does this payment get wired directly to you as you have
14 been requesting since the very first meeting?

15 A. It was sent to us directly to my recollection, but if it
16 was directly from F.G.G.

17 Q. That's what I'm asking, directly from C.F.E.?

18 A. No, I did not get it from C.F.E.

19 Q. Why did you want -- why did you want to get the money
20 directly from C.F.E.?

21 A. Well again, it's assurances, right. We go along with the
22 project. We got money. C.F.E. is a very reputable company. We
23 deal with them over the years on other projects and we know that
24 they can be vouched for, and again our equipment is our own
25 insurance.

1 Q. Your equipment is your what?

2 A. Is our own collateral. It's ours, right.

3 Q. So would you turn over your equipment at any time without
4 getting the money first?

5 A. Basically, we get to a point that we normally that we
6 normally -- the project gets to a payment schedule prior to
7 shipment, which actually tries to make us whole, right, to that
8 point, right.

9 Q. Government's Exhibit Number 83, is that an e-mail from you?

10 A. Yes, it is.

11 Q. And what is the date?

12 A. That is the 17th of June, 2010.

13 Q. Okay. And who is it to?

14 A. Mr. Gireud.

15 Q. Do you copy Mr. Delgado on this e-mail?

16 A. Yes, I do.

17 Q. And --

18 MS. KANOF: And we move that Government's Exhibit
19 Number 83 be admitted into evidence.

20 THE COURT: Ms. Franco.

21 MS. FRANCO: No, objection.

22 THE COURT: GX-83 is admitted.

23 BY MS. KANOF:

24 Q. In this e-mail, what are you trying to accomplish?

25 A. Basically, the first paragraph that have is to say we're

1 not working efficiently and certain informations, right, so I'm
2 saying, as you are aware, we've experienced several difficulties
3 in exchanging technical and other information with C.F.E. in
4 connection with the Agua Prieta number two project.

5 On several occasions, technical information that we
6 have provided to F.G.G. for the delivery to C.F.E. have not been
7 timely received by C.F.E. and some C.F.E. managers have voiced
8 their concerns at the flow of information is not adequate.

9 Q. Who did -- what C.F.E. managers and who did they voice
10 their concerns to?

11 A. Basically, to me. They actually voiced it to Mitsubishi
12 Mexico and went outside.

13 Q. Mitsubishi has a company actually in Mexico?

14 A. Yeah. We have two. We have Mitsubishi Corp, which is the
15 Corp global, and then we have Mitsubishi of the industry of
16 Mexico.

17 Q. Okay. But also to you, you said?

18 A. Yes.

19 Q. Who voiced a concern to you?

20 A. Marco Campbell.

21 MS. FRANCO: Objection, Your Honor. Calls for
22 hearsay.

23 MS. KANOF: I just said "who."

24 THE COURT: Well, but who voiced --

25 MS. FRANCO: Whatever he says is going to be hearsay.

1 THE COURT: Yeah, because obviously it's going to be a
2 concern.

3 MS. KANOF: I wasn't going to ask him what he said.

4 THE COURT: I know, but it's a concern we're
5 communicating that part of the hearsay.

6 MS. KANOF: No.

7 THE COURT: I'll sustain the objection.

8 MS. KANOF: So he can't say who?

9 THE COURT: Not who voiced a concern.

10 MS. KANOF: Okay.

11 BY MS. KANOF:

12 Q. What did you do with regard to the concerns that were
13 voiced?

14 A. I wrote this letter.

15 Q. Okay. And what were you requesting?

16 A. Pursuant to the request in our letter of May the 7th, we
17 discontinued communicating directly with C.F.E. and relied on
18 you to promptly pass along, coordinate the flow of information
19 between C.F.E. and M.P.S.A., and I've just avoided direct
20 communications with C.F.E. per your request. Unfortunately, the
21 inefficient process posed by F.G.G. has not worked. M.P.S.A.'s
22 inability to communicate directly with C.F.E. has become an
23 obstacle in exchanging critical information with C.F.E. and
24 negatively impacting M.P.S.A.'s project management.

25 Q. Did you get any relief from this?

1 A. By tension, yeah.

2 Q. I'm sorry?

3 A. Personal.

4 Q. Oh, no.

5 Was Mitsubishi, after this e-mail, did anything change
6 about the rules regarding your communication with C.F.E.?

7 A. It started to change, yes. We had meetings.

8 Q. Did you have any discussion with Mr. -- I know you sent the
9 e-mail to Mr. Gireud, but did you have any discussions with
10 Mr. Delgado regarding this communication problem?

11 A. I think we had a telephone conversation, with it, with
12 regard to this.

13 Q. And things did change after that?

14 A. There was a process and we started putting in a -- new
15 protocols with C.F.E.; how we'd send letters, how we was going
16 to be there to go forward.

17 Q. Okay. Explain what this new process and protocol was?

18 A. Bringing back the direct communications with it, so then I
19 could actually send it, F.G.G. would copy C.F.E. and the
20 technical people.

21 Q. Okay. In front of you, I have Government's Exhibit
22 Number 86. Could you please review it to indicate whether or
23 not you recognize it and you are the author?

24 A. I am the author, yes.

25 Q. And to whom did you send a copy?

1 A. Again, to Mr. Gireud. This was an official Mitsubishi
2 mail.

3 MS. KANOF: We'd move that Government's Exhibit Number
4 86 be admitted into evidence.

5 THE COURT: Ms. Franco?

6 MS. FRANCO: No, objection.

7 THE COURT: GX-86 is admitted.

8 BY MS. KANOF:

9 Q. Mr. Beddard, what's the date of this e-mail?

10 A. The 13th of July 2010.

11 Q. Okay. And what is the purpose of this e-mail?

12 A. Uh, it says, we have not received our money with regard to
13 the subcontract payment due date of the 6th of July 2010 for the
14 second invoice in the sum of 7 million per the payment schedule
15 on the M.P.S.A.-F.G.G. subcontract as amended by amendment
16 number one on the 23rd of April, 2010 has now passed. We are
17 urgently awaiting receipt of these funds and/or an
18 acknowledgment of the assignment to M.P.S.A. of all F.G.G.'s
19 collection rights under the acquisition contract between F.G.G.
20 and C.F.E. in accordance with F.G.G.-M.P.S.A. subcontract as
21 amended by the amendment number one.

22 Q. So this is July 16th, correct?

23 A. Correct.

24 Q. And you refer again to the assignment of collection rights,
25 you don't have it yet?

1 A. Correct.

2 Q. And you don't have the money yet?

3 A. Correct.

4 Q. And what date were you supposed to get the money?

5 A. We were supposed to receive it on the 6th of July.

6 Q. And were you aware that on the 6th of July, Mr. Delgado got
7 12 million into his Turks & Caicos' account?

8 A. No, I was not.

9 Q. On Government's Exhibit Number 89, I'm going to show it
10 just to you. Do you recognize this is an e-mail that you
11 authored?

12 A. Yes.

13 Q. And who did you write it to?

14 A. Again, it was it was official mail to Mr. Gireud.

15 MS. KANOF: We'd ask that Government's Exhibit Number
16 89 be admitted into evidence.

17 THE COURT: Ms. Franco?

18 MS. FRANCO: No, objection.

19 THE COURT: GX-89 is admitted.

20 BY MS. KANOF:

21 Q. Mr. Beddard, did you send an e-mail to Mr. Gireud and copy
22 it to a multitude of individuals including Mr. Delgado?

23 A. Correct.

24 Q. Okay. And the date of this is October 19th of 2010; is
25 that correct?

1 A. Correct.

2 Q. And what is the purpose of this?

3 A. Basically, what I'm saying is that F.G.G. is in breach of
4 the subcontract by failing to provide a letter of the commission
5 confirming its approval of the irrevocable assignment of F.G.G.
6 collection rights under the contract, executed on January the
7 6th.

8 Q. So now it's October?

9 A. Yes.

10 Q. And way back in April, you had given them notice of breach
11 of contract; is that correct?

12 A. Correct.

13 Q. Did you ever walk away from that contract because it was in
14 beach?

15 A. No. That's not Mitsubishi way.

16 Q. I'm sorry? I couldn't hear you.

17 A. No. That is not Mitsubishi way.

18 Q. That's not the Mitsubishi way? Is that what you said?

19 A. I did.

20 Q. What do you mean by that?

21 A. We have standards in our brand name, right. We respect in
22 the industry and is respected for honesty and integrity. And
23 basically with C.F.E. is one of our major clients. For
24 Mitsubishi, in general, it's one of our major global entities.
25 We would want to help them, if possible.

1 Q. You said they're one of your major clients. At this time,
2 had you ever worked a project in Mexico?

3 A. Not personally.

4 Q. Had Mitsubishi worked projects with C.F.E.?

5 A. Oh, many projects.

6 Q. Okay. And so you said you did not execute the breach?

7 A. To be totally honest, as I said before, there was never no
8 stake to terminate. There was to termination clause. Even
9 after the amendment we thought -- well, I thought -- I accepted
10 a project after that amendment on the reliance on the clause for
11 project management saying that we were the sole spearer of all
12 project manager in all affairs meaning that our decision was it,
13 right, so I relied on that, right, to accept the project for
14 projects, but again, there was no termination clauses put in.

15 Q. In this October 19th, 2010 e-mail, are you again notifying
16 Mitsubishi of a breech?

17 A. Uh, yes.

18 Q. And the basis of the breach is?

19 A. Again, there's no assignment of collection rights.

20 Q. Anything else?

21 A. Basically, the financial assurances. We needed demand
22 adequate assurances and letters for the collection rights, give
23 us that. And also what I state at the end is that although
24 M.P.S.A. is the sole owner of the title to the equipment until
25 receipt of full payment, we require payment security. And we

1 relied on F.G.G.'s assignment of collection rights when we
2 agreed to proceed with the performance of the subcontract and
3 release the possession of the equipment under receipt of the
4 fair payment under the amendment number one.

5 Q. So this is -- the purpose of this letter since you're not
6 going to breach the contract is what?

7 A. Basically, to put a shot across the bows of F.G.G. saying,
8 until we get this and we are assured, we are not leaving the
9 equipment, right, we need that third payment and the collection
10 rights in our name prior to releasing the equipment.

11 Q. Okay. So before, you had been talking a lot about meeting
12 a delivery date, would you deliver the equipment without the
13 assignment of collection rights?

14 A. I would not.

15 Q. And what does this do to your planning obligations?

16 A. Well, again, that would be the critical part. We would not
17 release -- I would not release. It would take a higher senior
18 management, right, to instruct me to do that.

19 Q. Okay. I'm showing you Government's Exhibit Number 92. Do
20 you recognize this is an e-mail that you wrote?

21 A. I did.

22 Q. Okay.

23 MS. KANOF: We ask that Government's Exhibit Number 92
24 be admitted into evidence.

25 THE COURT: Ms. Franco?

1 MS. FRANCO: No, objection, Your Honor.

2 THE COURT: GX-92 is admitted.

3 BY MS. KANOF:

4 Q. On -- do you have it in front of you?

5 A. Yes, ma'am.

6 Q. We're now in 2011; is that correct?

7 A. Yes. It's the 24th of February, 2011.

8 Q. And who did you write this e-mail to?

9 A. Again, because it was official mail, it was to Mr. Gireud.

10 Q. And that's your protocol?

11 A. Correct.

12 Q. And did you copy it to Mr. Delgado?

13 A. I -- yes.

14 Q. And what is the subject matter of the e-mail?

15 A. Basically, there were F.G.G. stock urging clarification of
16 equipment title.

17 Q. Going to the text, what's the purpose of this e-mail?

18 A. As it says, can you urgently confirm or rebut by return if
19 F.G.G. used our equipment as a guarantee in a pledge agreement
20 with C.F.E. in place of a letter of credit. Please be informed
21 that M.P.S.A. is the sole owner of the title to the equipment
22 until receipt of full payment -- payment in full.

23 Q. So why are you writing this e-mail?

24 A. Being advised there was no letter of credit and pledge had
25 been given and the pledge was in place for 20 million, letter

1 for credit, and our equipment was pledged in place of that.

2 Q. Okay. What's a letter of credit?

3 A. Again, it's our assurance with it for this project, the
4 supplier of it or the winner of the project had to put a letter
5 of credit of 20 million in place that if you didn't meet your
6 guarantees and everything that the end user or who is assigned
7 could drawdown on that letter of credit.

8 Q. Okay. So you said something about \$20 million?

9 A. Yeah. I think -- looking at the documents, the letter
10 credit ought to be 20 million set by the commission of C.F.E.

11 Q. So C.F.E. required \$20-million-dollar letter of credit for
12 the equipment?

13 A. That's what I was getting.

14 Q. Who was supposed to provide that letter of credit?

15 A. F.G.G.

16 Q. Okay. You had no response -- Mitsubishi, did they have any
17 responsibility for that letter of credit?

18 A. No.

19 Q. Did you have any contract between Mitsubishi and C.F.E.?

20 A. No.

21 Q. How much was your equipment worth according to this
22 contract?

23 A. 102 million.

24 Q. And you've been in this business how long?

25 A. 40 years.

1 Q. Are letters of credit common?

2 A. Yes.

3 Q. And your equipment is worth -- have you ever collateralized
4 a letter of credit or participated in collateralizing a letter
5 of credit?

6 A. Yes.

7 Q. And what value do you have -- first of all, do you usually
8 pay for a letter of credit?

9 A. Yes.

10 Q. And how does that work?

11 A. Basically, you go to a financial institution, banks, and
12 then what you say is the amount of letter of credit that you'd
13 want and then the language, and then you say who is payable and
14 you put rules of a drawdown into it.

15 Q. So, if you needed a \$20-million letter of credit, you know,
16 do you have it pay for it?

17 A. Yes.

18 Q. How much do you have to pay for, say, a \$20-million letter
19 of credit?

20 A. I've just done a 10 million one. It cost me -- I think it
21 was about 700-thousand.

22 Q. Okay. So for a \$10-million letter of credit, you just need
23 700-housand?

24 A. Yes.

25 Q. Okay. Does it make business sense to pledge a \$106 million

1 of equipment for a \$20-million letter of credit?

2 A. Not on my -- not in my experience, no. You would only make
3 a letter of credit the value of your risk.

4 Q. Okay. And what -- so what do you mean by the value of your
5 risk?

6 A. Well, as I said to you, what we look at when we do a risk
7 assessment is what the L.D.s are, which is liquidated damages,
8 in case you don't meet your delivery dates or your performance
9 of the unit and there's set figures in there. So you calculate
10 what your maximum is and then that maximum would be the maximum
11 amount of any letter of credit you would put up there. You
12 wouldn't just put it open-ended for the full contract.

13 Q. You worked for Mitsubishi for a long time; is that correct?

14 A. Associated for a long time.

15 Q. Okay. Who at Mitsubishi would have to approve pledging
16 their equipment for a letter of credit -- in lieu of letter of
17 credit?

18 A. Basically, an officer of the company could do that.

19 Q. What level of an officer?

20 A. Basically, that would be -- depending if he is an officer,
21 a V.P. level, minimum.

22 Q. Okay. V.P. Japan or?

23 A. No, because this was not a Japanese contract. This was a
24 contract in the U.S. by M.P.S.A., right, so basically I become
25 an officer of the company later on, and so I can sign contracts

1 and different things, so I was an officer so I can pledge the
2 company, but as a non-officer, you cannot pledge or engineer the
3 contract.

4 Q. Would you permit another company to pledge Mitsubishi
5 equipment?

6 A. Me personally? No. Definitely not.

7 Q. So you reviewed all of the contracts in this case in order
8 to do your job; is that correct?

9 A. The subcontract part, right. I didn't review the prime
10 contract.

11 Q. Okay. And did you ever find anything that gave F.G.G.
12 permission to pledge Mitsubishi equipment?

13 A. No.

14 Q. With regard to Government's Exhibit Number 82, why are you
15 asking for urgent confirmation or rebuttal by return if F.G.G.
16 used the equipment?

17 A. Because I'd been informed that this had occurred. And in
18 normal things a lot of gossip goes on. I just wanted to make
19 category clear that this was not the case.

20 Q. Government's Exhibit Number 93. Got it?

21 A. Yeah.

22 Q. Is this an e-mail being written to you?

23 A. Yes.

24 Q. Do you recall receiving it?

25 A. Yes.

1 MS. KANOF: Moving exhibit -- request to move Exhibit
2 Number 93 into evidence.

3 THE COURT: Ms. Franco?

4 MS. FRANCO: If I could just have a moment, Your
5 Honor.

6 THE COURT: Yes, ma'am.

7 MS. FRANCO: No, objection Your Honor.

8 THE COURT: GX-93 is admitted.

9 BY MS. KANOF:

10 Q. Mr. Beddard, the beginning of this e-mail stream is the
11 e-mail that we already talked about in 92. Now we're in 93.
12 And do you receive a response to your e-mail?

13 A. I did, from Mace Miller.

14 Q. And again, who is Mace Miller?

15 A. He's one of the three people I knew at F.G.G.

16 Q. Okay. But you don't know anything about his credentials or
17 anything like that?

18 A. Only that he did go to law school, but he was involved in
19 the electric company in El Paso in some form. I don't know.

20 Q. And is Mr. Delgado copied on this e-mail?

21 A. Yes, he is.

22 Q. What did Mr. Miller say to you?

23 A. Well, first of all -- actually, he's asked me who's
24 coordinating this, where is the information coming from. And
25 then he told me he spoke to Mr. Gireud and he has no knowledge

1 of any deviation from our spec.

2 Q. Okay. Well, you're not talking about specifics specs, are
3 you?

4 A. Uh, no.

5 Q. Okay. What did you take him to mean?

6 A. That -- I took it that there was no pledge, right.

7 Q. That there was no pledge?

8 A. Yeah. And so with that, I assumed wrongly that there was
9 still a letter of credit.

10 Q. You respond to him how?

11 A. I can't remember actually.

12 Q. It's in front of you.

13 A. Oh, sorry.

14 One of the things I looked at when you say how did I
15 respond, I responded to this accusation of this pledge as not
16 being part of my contract. So basically that was a legal entity
17 with it. So what I did is I passed it to our legal department
18 and the legal representative, and Mitsubishi -- that project was
19 Mr. Patrick Altamura.

20 Q. So how do you respond to Mr. Miller or I mean how does
21 Mr. Altamura respond?

22 A. Basically, he just says it is in your representation that
23 neither you nor Fernando Gireud are aware of the pledge
24 agreement in which F.G.G. has attempted to pledge M.P.S.A.
25 equipment to furnish -- to be furnished under our subcontract

1 with F.G.G.

2 Q. Government's Exhibit Number 94. You got the number?

3 A. Yes.

4 Q. Is that an e-mail that is sent from Mr. Delgado. And that
5 you are -- let's see. Oh, no, I'm sorry. It's about you. You
6 are not copied on it. I take it back.

7 Okay. Government's Exhibit Number 97. I'll show you
8 the number. Let me scroll down so that you can identify it by
9 exhibit number.

10 Is that an e-mail from you?

11 A. Yes, it is.

12 Q. Okay. On February 28th of 2011 at the top?

13 A. 28th of February, 2011.

14 MS. KANOF: Move that Government's Exhibit Number 97
15 be admitted.

16 THE COURT: Ms. Franco?

17 MS. FRANCO: No objection.

18 THE COURT: GX-97 is admitted.

19 BY MS. KANOF:

20 Q. Do you write a response to a response by Mace Miller?

21 A. Yes.

22 Q. Okay. So first, let's talk about what Mace Miller wrote to
23 you about having researched the matter. What does he tell you?

24 A. Mace says that as reflected by your records and copy of
25 C.F.E.-F.G.G. Agua contract in your possession, pursuant to John

1 Adams' request and approval of the said equipment was pledged
2 with a clear understanding that M.P.S.A. is the sole owner of
3 the title to the equipment until receipt of full payment.
4 During John's visit negotiations with C.F.E., prior to final
5 execution of the contract of said agreement was reached and
6 memorialized as such.

7 For further reference and clarification on any and all
8 of the technical administration or financial agreements related
9 to Agua Prieta project, please refer to copies of the final
10 agreement and it's attachments that were approved and signed and
11 pledged by page -- pledged by page, by page, by John Adams in
12 his capacity of M.P.S.A. officer in charge of the project and
13 M.P.S.A. Hector Ponce.

14 Q. Okay. So he -- first of all he talks about the
15 C.F.E.-F.G.G. contract in your possession. Did you have a
16 contract in your possession that said that John Adams gave them
17 permission to pledge the equipment?

18 A. No.

19 Q. Okay. Now let's talk about copies of the final agreement
20 and it's attachments that were approved and signed page by page
21 by John Adams and Hector Ponce, right?

22 A. That's what it says.

23 Q. Okay. So that would be some kind of contract between
24 F.G.G. and Mitsubishi, correct?

25 A. Yes, because he said --

1 Q. Okay. So let's look first at Government's Exhibit
2 Number 7, the original teaming agreement. Do you see
3 signatures -- I'm going to page through quickly any page by page
4 initials or signatures of Mr. Ponce or Mr. Adams of the teaming
5 agreement.

6 A. I see no initials at all of anything.

7 Q. Would you recognize them if you saw them, their signatures?

8 A. Well, it's usually -- a signature, possibly, but --

9 Q. Okay. Well --

10 A. -- this is a time ago. I don't know if I can do it now.

11 Q. So keep looking, please. So that's -- this is one of the
12 written agreements. Do you see any signatures or initials?

13 A. Now I see signatures.

14 Q. But on every page?

15 A. No.

16 Q. And -- we'll let the jury look at it, but there's nothing
17 about a pledge in here, is there?

18 A. This was the teaming agreement, which I just verified on a
19 risk analysis. I didn't see anything because this is the
20 teaming agreement not the subcontract.

21 Q. Okay. Government's Exhibit Number 12A which is in
22 evidence. This is the first subcontract. It's the English
23 version. So let me go to the Spanish version, since it's the
24 signed version, Government's Exhibit Number 12, and let's page
25 through it and see if every page is signed or initialed .

1 Stop me, please, if you see a signature or initial on
2 every page. Almost there, sorry.

3 A. I see a signature.

4 Q. Is that John Adams signature?

5 A. No.

6 Q. Whose signature is that?

7 A. That's Greg Wunder.

8 Q. Is that Hector Ponce's signature?

9 A. No.

10 Q. No. It's Greg Wunder's signature?

11 A. Correct.

12 Q. So neither John Adams nor Hector Ponce are even on the
13 original subcontract, correct?

14 A. Correct.

15 Q. That you know of.

16 Okay. Government's Exhibit 18, the prime contract --
17 MS. KANOF: Is 18 in evidence?

18 THE COURT: Yes, ma'am.

19 MS. KANOF: Okay.

20 BY MS. KANOF:

21 Q. Page through real quick. I'll just go to the signature
22 page and see who signed this contract.

23 Mitsubishi was not a party to this contract, correct?

24 A. Correct.

25 Q. For Mitsubishi -- for F.G.G.?

1 MS. FRANCO: Your Honor, if I may, the U.S. attorney
2 is scrolling through it too quickly. There are initials on each
3 of the pages in the Mexican version.

4 MS. KANOF: I think the e-mail said it was a contract
5 between F.G.G. and Mitsubishi and I'm showing that they're not
6 parties to this contract.

7 MS. FRANCO: Your Honor, the e-mails speak for itself.

8 MS. KANOF: She can go through every page of this if
9 she wants.

10 THE COURT: I'm sorry?

11 MS. FRANCO: The e-mail of the exhibit will speak for
12 itself, the e-mail that she introduced prior to it. My point
13 is, is that out of an abundance caution and fairness, that she
14 slow down so that the jury ask see on the Spanish version of the
15 prime contract there are initials on every single page of it.

16 MS. KANOF: That's fine.

17 BY MS. KANOF:

18 Q. Do you recognize -- I have before you page 18 -- do you
19 recognize any of those initials as any individual that you've
20 worked with?

21 A. No.

22 Q. No. Any initials on page 17?

23 A. No.

24 Q. Any initials on page 16?

25 A. No.

1 Q. You've worked in Mexico before, haven't you?

2 A. No. This was my first project in Mexico.

3 Q. Let's look at who signed -- would you recognize

4 Mr. Delgado's signature and initials?

5 A. No, I don't think so. Not now. So many years have passed.

6 But normally, there was a glossary with whose name and signature

7 initialed, so I don't...

8 Q. The person signing this contract, "el proveedor," whose

9 name is on there?

10 A. Basically that's el Comisión and --

11 Q. No, no. Below.

12 A. Uh --

13 Q. Is that Mr. Delgado?

14 A. Yeah, Where it says Señor Marco Delgado.

15 Q. Okay. And if the jury wants to go through and see if his

16 initials are on it, they could, correct?

17 A. I would imagine.

18 Q. Government Exhibit Number 72. You recognize that's been

19 admitted into evidence of the amendment to the subcontract?

20 A. Yes.

21 Q. I'm trying to get that thing off. We'll page through it.

22 This is amendment between F.G.G. and Mitsubishi, correct?

23 A. Correct.

24 Q. And do you see Mr. Adams or Mr. Ponce's initials or

25 signature on every page?

1 A. They would not be on the page, because they were not in the
2 plan.

3 Q. And again, who signed this on behalf of Mitsubishi?

4 A. Greg Wunder.

5 Q. And by April 23rd of 2010, was John Adams still employed
6 with Mitsubishi?

7 A. No.

8 Q. I'm sorry?

9 A. No.

10 Q. Okay. What happened to John Adams?

11 A. He left the company I think the 16th to take another
12 position with some other company.

13 Q. Had he been planning to leave for sometime?

14 A. I don't know. You have to ask John that.

15 Q. We'll ask him. He'll be here soon.

16 Government's Exhibit 97, that's what we were talking
17 about. So copies of the final -- and it's attachments that were
18 approved and signed page by page by John Adams in his capacity
19 as an officer and by agent Hector Ponce. So can you think of
20 any other agreements or attachments that would have approved the
21 pledge that we haven't gone through?

22 A. Not to my knowledge.

23 Q. Okay. You -- then it says, as you are aware both Mr. Adams
24 and Mr. Ponce were part of all contract negotiations regarding
25 the contract itself and after approving the scope of the same

1 received a copy with all of its attachments.

2 Did Mitsubishi receive a copy with all of the
3 attachments of the C.F.E.-F.G.G. contract?

4 MS. FRANCO: Your Honor, he's not the custodian of
5 record. He can say what he got, not what the company got.

6 THE COURT: Yeah, I'll sustain that objection.

7 BY MS. KANOF:

8 Q. What else do you talk about?

9 A. Uh, regarding another matter -- it's saying regarding
10 another matter, right, Mace talks -- is saying --

11 Q. That's Mace Miller?

12 A. Yeah, from Mace. He saying regarding another matter, it is
13 my understanding that Mitsubishi has attempted to interfere with
14 an existing long-term service agreement between F.G.G. and
15 C.F.E.

16 Q. What's a long-term service agreement?

17 A. It's the maintenance agreement after we finish the project,
18 commission it and go through the warranty thing. It becomes
19 final and handed over to the service center. And a long term
20 service agreement goes on for a long time. It can be 10 years
21 20 years. And then we provide hot parts, right, and provide the
22 intervals -- the inspection intervals.

23 Q. In the original teaming agreement and original subcontract,
24 did that contract Mitsubishi for the long-term servicing
25 agreement?

1 A. I was informed on this thing that --

2 Q. Well, if you don't know, just say you don't know.

3 A. Oh, I don't know.

4 Q. The long-term servicing agreement was independent -- was it
5 independent of the prime -- of the equipment agreement?

6 A. Yes, it was independent, but whoever got the -- use their
7 technology would get the -- normally would get the long-term
8 service agreement.

9 Q. Normally.

10 If you would look at that and verify it was an e-mail
11 sent to you.

12 A. Yes.

13 Q. Okay. And is it from Mr. Delgado?

14 A. It's from -- yes.

15 MS. KANOF: We move that Government's Exhibit 98 be
16 admitted into evidence?

17 MS. FRANCO: No, objection.

18 THE COURT: GX-98 is admitted.

19 BY MS. KANOF:

20 Q. So initially, is the letter from or the e-mail from Mace
21 Miller that we just went through, correct?

22 A. Correct.

23 Q. And then how do you respond?

24 A. Basically, I sent a notice to or e-mail to Mace that I
25 disagree with your confusion and vague explanation in your

1 e-mail, actually.

2 Q. And what do you ask?

3 A. And I just state M.P.S.A. requires that F.G.G. immediately,
4 by return mail, provide a copy of the specific document which
5 F.G.G. claims contains John Adams request and final approval
6 that the M.P.S.A. equipment be pledged in place of a letter of
7 credit which was to be by F.G.G.

8 Q. And how does Mr. Delgado respond?

9 A. If M.P.S.A. agrees or not, that is their problem. Please
10 refer to signed company of the contract.

11 Q. What contract is he talking about?

12 A. It's not the subcontract.

13 MS. FRANCO: Objection, Your Honor. Calls for
14 subcontract. How would he know?

15 THE COURT: Sustained.

16 BY MS. KANOF:

17 Q. What contract -- were there any contracts that Mr. Adams
18 signed?

19 A. Not to my knowledge.

20 Q. Government's Exhibit 99. I'm showing you the number.

21 Is that an e-mail to you?

22 A. Yes.

23 Q. Okay.

24 MS. KANOF: Move that Government's Exhibit Number 99
25 be admitted into evidence.

1 THE COURT: Ms. Franco?

2 MS. FRANCO: No objection, Your Honor.

3 THE COURT: GX-99 is admitted.

4 BY MS. KANOF:

5 Q. So after you send your e-mail on February 28th of 2010,
6 does Mr. Miller respond to you on March 1st of 2011?

7 A. Yes.

8 Q. And what does he say to you?

9 A. Kevin, per your request, I requested a copy of the document
10 from C.F.E. Hopefully that will clear this thing up.

11 Q. Okay. But, Mr. Beddard, in his letter to you or his
12 lengthy e-mail to you, doesn't he refer you to contracts, page
13 by page of John Adams, that have that pledge permission in it?

14 A. Yes.

15 Q. In that case, what is -- I mean, why does he have to get it
16 from C.F.E.?

17 A. I do not know.

18 Q. Government's Exhibit Number 100. You see that it's 100.
19 Is this an e-mail from you to Mr. Miller?

20 A. And to Mr. Marco Delgado.

21 Q. And to Mr. Delgado?

22 MS. KANOF: Move admission of Government's Exhibit
23 Number 100.

24 THE COURT: Ms. Franco?

25 MS. FRANCO: No, objection.

1 THE COURT: GX-100 is admitted.

2 BY MS. KANOF:

3 Q. And what are you telling Mr. Delgado and Mr. Miller?

4 A. Well, I must have received a -- can you scroll down so I
5 can --

6 Q. This is 100 and -- I'm sorry. You asked -- this is a --

7 A. Yes.

8 Q. -- confusing and vague explanation and Mr. Delgado's saying
9 it was John Adams's contract. Again, you're seeing it's
10 Mr. Miller saying he's going to retrieve it. And you respond?

11 A. I just said, thanks Mace. Looking forward to receiving it.

12 Q. Did you ever receive it?

13 A. No.

14 Q. Government's Exhibit Number 102. Do you recognize an
15 e-mail from yourself?

16 A. Yes.

17 Q. And is it to Mr. Delgado?

18 A. Yes.

19 MS. KANOF: Move that Government's Exhibit Number 102
20 be admitted into evidence.

21 THE COURT: Ms. Franco?

22 MS. FRANCO: No, objection.

23 THE COURT: GX-102 is admitted.

24 BY MS. KANOF:

25 Q. Government's Exhibit 102, do you write to Mr. Delgado now?

1 A. Yes.

2 Q. And you're writing with regard to an attached letter; is
3 that correct?

4 A. Yes.

5 Q. Okay. Was a letter sent to -- not to you, personally, but
6 to Mitsubishi on December 28th?

7 A. There's was a letter saying on the 28th, this letter from
8 Mitsubishi to Mr. Gireud.

9 Q. And that was a long time before this e-mail stream. This
10 is the 28th of 2009, correct?

11 A. That would be after the first contract -- subcontract.

12 Q. And you are now attaching a letter that was written by
13 whom?

14 A. John Adams.

15 Q. Okay. And do you recognize that as John Adams' signature?

16 A. I couldn't say yes are no.

17 Q. And why are you attaching this letter?

18 A. Could we go back to --

19 Q. Sure.

20 A. There must be something contained. Above reference
21 letter -- basically, we were told that John had put that letter
22 in the 28th, and he was told that it had been redacted. So I
23 contacted John, with it, and said John, this letter, right, did
24 you ever redact this letter? And he said, no, it was written --

25 MS. FRANCO: Objection, Your Honor. Hearsay.

1 THE COURT: Sustained.

2 BY MS. KANOF:

3 Q. Let's look at the letter then. So you are attaching the
4 letter, correct?

5 A. Correct.

6 Q. And with regard to this letter, what was Mr. Adams talking
7 about?

8 A. Basically in that letter, he says Mitsubishi's once again
9 very concerned about the informality of F.G.G.'s actions on the
10 project.

11 Q. Continue please.

12 A. And the failure to respect M.P.S.A.'s request.

13 MS. FRANCO: Your Honor, if I may? Mr. Adams is
14 scheduled to testify and it's more appropriate for him to
15 testify as to a letter he sent.

16 THE COURT: Well, this witness can tell us what he
17 thought it meant to him. He can't tell us what it meant to
18 Mr. Adams.

19 MS. FRANCO: Right, but he's reading the letter. He's
20 reading the exhibit, so I don't know what it meant.

21 THE COURT: If he's reading the exhibit, the exhibit
22 is in evidence. He can do that.

23 BY MS. KANOF:

24 Q. Okay. Look at paragraph number two, please.

25 A. Number two is related to the above, is F.G.G.'s

1 responsibility if required to arrange the letter of credit to
2 warrant completion of the equipment prime contract.

3 Q. Okay. And you -- why were you attaching this letter?

4 A. Because when we referenced this letter at the meeting, I
5 was told by Marco that John had redacted that letter, right, he
6 had taken it back.

7 Q. And was this letter in the, I don't know, in the files of
8 Mitsubishi?

9 A. In the legal file. I got it from legal, yes.

10 Q. Okay. And the next sentence, please provide a copy of the
11 equipment. What is L.O.C.?

12 A. It's letter of credit.

13 Q. Okay. This is way back in December of 28; is that correct?

14 A. Correct.

15 Q. Number three?

16 A. I finally provide a complete copy of the C.F.E. prime
17 contract for our review and for finalization of our equipment
18 supply subcontract. We already have a copy of the bid specs and
19 technical specifications, which were initiated for the contract
20 attachment purposes. We therefore need a final signed copy of
21 the prime contract as well as any additional annexes that were
22 attached to the executed contract.

23 Q. Did he ever provide you with the redacted version?

24 Dr. Mr. Delgado, Mr. Gireud or Mr. Miller, any of the three from
25 F.G.G., ever provide you with what they said was the redacted

1 version of the December 28th Adams letter?

2 A. Not to me, no.

3 Q. Do you know if any redacted letter was provided -- whether
4 or not any redacted letter was provided to Mitsubishi?

5 A. To my knowledge there was no redacted letter.

6 Q. Okay. Government's Exhibit 104.

7 Is this an e-mail to you?

8 A. Yes.

9 Q. On March 7th of 2011?

10 A. Yes.

11 MS. KANOF: We move 103 into evidence, Your Honor.

12 THE COURT: Ms. Franco?

13 MS. FRANCO: No, objection.

14 THE COURT: GX-103 is admitted.

15 BY MS. KANOF:

16 Q. After that, do you receive an e-mail from Mr. Delgado?

17 A. Correct.

18 Q. And what does he tell you?

19 A. Thank you for the follow-up with John. Given the time
20 which has lapsed, I can only surmise he has forgotten the
21 various conversations surrounding the topic. Just from what I
22 have been told, he forgot C.F.E. provided him with an entire
23 copy of the contract and all its attachments. Unfortunately,
24 two of the key conversations took place as part of the
25 conference call with C.F.E. officials participating. During our

1 visit of next week, I will make a point to discuss the issue and
2 see if their recollections varies from that of Johns. I will
3 also work on getting copies of John's e-mails regarding this
4 issue.

5 Q. Okay. And the second paragraph?

6 A. I have also reviewed the pledge agreement and formally
7 confirm to you that under the applicable terms, title was not
8 transferred and will not be transferred until such time that all
9 payments are made. As such F.G.G. will formally request from
10 C.F.E. two, number one, confirm the title, will not transfer it
11 until full payment; number two, waiver of confidentiality
12 agreements in order to share with M.P.S.A. all pertinent
13 information. Looking forward to seeing you.

14 Q. Okay. So first of all, did he send a copy of the pledge
15 agreement?

16 A. No.

17 Q. And what difference does it make whether or not title
18 transfers?

19 A. To me, that wasn't the issue.

20 Q. Okay. What was the issue?

21 A. The issue was pledging our equipment in place of a line of
22 credit and getting monies from us to pay for the financials of
23 that.

24 Q. Does he address the issue of a letter being redacted? You
25 just sent him a letter saying it wasn't redacted. And does he

1 address or send you the alleged redacted letter?

2 A. No. He just says, John's got it. I'll mail it to you.

3 Q. Government's Exhibit 104. Do you recognize that this is
4 the e-mail to you?

5 A. Yes.

6 Q. Do you -- we move Government's Exhibit 104 into evidence?

7 THE COURT: Ms. Franco?

8 MS. FRANCO: No, objection.

9 THE COURT: GX-104 is admitted.

10 BY MS. KANOF:

11 Q. Government's Exhibit 104 is from Mr. Delgado, correct?

12 A. Correct, yes.

13 Q. He says, now we've changed subjects on the same day; is
14 that correct?

15 A. It appears so.

16 Q. First you sent an e-mail on March 6th, and what do you tell
17 Mr. Delgado?

18 A. With regard to your statement and information to the above
19 referenced attached letter during our meeting of the 2nd of
20 March, 2011, we confirmed with Mr. John Adams that he did not
21 issue such a letter.

22 Q. Okay. So that's talking about the December 28th letter.
23 Okay.

24 A. Um --

25 Q. He did issue it December 28th, '11.

1 A. He did issue such letter.

2 Q. Yeah. And then Mr. Delgado doesn't address that, but
3 responds instead about what?

4 A. Big favor -- Kevin, big favor. I just received an e-mail
5 from the Comisión requesting that an assignment request be
6 specific as to each payment in terms -- in terms of time and
7 amount. Thanks.

8 Q. Okay. So now we're in 2011 and he's talking about the
9 assignment of collection rights?

10 A. Yes.

11 Q. You still don't have them.

12 A. I still don't have them.

13 Q. Government's Exhibit Number 105.

14 Do you recognize that as an e-mail on which are you
15 copied?

16 A. Yes.

17 MS. KANOF: Move Government's Exhibit Number 105 into
18 evidence.

19 MS. FRANCO: No, objection.

20 THE COURT: GX-105 is admitted.

21 BY MS. KANOF:

22 Q. On March 10th of 2011, who is Luis Burgueño?

23 A. Luis? What we did, we brought in a Mexican law firm to
24 support us in Mexico, and Luis was assigned to me because we
25 were uncomfortable when we were meeting on the technical of

1 engineers and I wanted a lawyer from F.G.G. there. So basically
2 what I did, I got Luis, who was a Mexican lawyer, to accompany
3 me to every meeting, right, so he was like protection.

4 Q. So basically in this e-mail, he prepared a draft of what a
5 letter requesting an assignment of collection rights should look
6 like?

7 A. Yes. We asked him what it would look like in Mexico. We
8 can do one in the U.S. for our legal, but these nuances in
9 Mexico, you've got to look after them, so we asked the Mexican
10 law firm to produce --

11 Q. And did you attach this and send it to Mr. Delgado in
12 Government's Exhibit 105?

13 A. We sent the draft, yes, but I don't know what number it
14 was.

15 Q. Government's Exhibit Number 106. Do you recognize this as
16 an e-mail originating from you?

17 A. Yes.

18 Q. To Mr. Gireud and copied to Mr. Delgado?

19 A. Yes.

20 MS. KANOF: We move that Government's Exhibit 106 be
21 admitted into evidence.

22 THE COURT: Ms. Franco:

23 MS. FRANCO: No, objection.

24 THE COURT: GX-106 is admitted.

25 BY MS. KANOF:

1 Q. Is this just a transmittal of that letter?

2 A. Yes.

3 Q. Also, are you asking in the second paragraph or -- I'm
4 sorry -- the beginning e-mail from you starting with, likewise,
5 F.G.G. L.L.C. hereby authorizes, what's that about?

6 A. Basically, what we're looking at is I can't send a letter
7 to C.F.E. or the Comisión because it's not my contract, it's
8 not a protocol. So what we're doing is drafting a letter, and
9 then we're saying, okay then, Marco, F.G.G. or Gireud, put --
10 paste that onto your letterhead unless -- and look at it and
11 revise it and then submit it.

12 Q. Okay. Government's Exhibit Number 107. Do you recognize
13 that as an e-mail from you?

14 A. Yes.

15 Q. To Mr. Gireud copied to Mr. Delgado?

16 A. Correct.

17 MS. KANOF: We move Government's Exhibit 107 be
18 admitted into evidence.

19 THE COURT: Ms. Franco?

20 MS. FRANCO: No, objection.

21 THE COURT: GX-107 is admitted.

22 BY MS. KANOF:

23 Q. What's the date of this e-mail?

24 A. Uh, the 17th of March, 2011.

25 Q. And what is the content of this e-mail?

1 A. We have recently received information regarding the pledge
2 agreement executed on the January, the 15th, 2010, by F.G.G.
3 Enterprises and the Federal Electricity Commission, C.F.E., and
4 the administration trust, by which the following equipment
5 collectively the property of M.P.S.A. and which to this date
6 remain -- you're going a bit fast.

7 Q. I'm sorry.

8 A. Remain in M.P.S.A.'s possession.

9 I've been purportedly pledged by F.G.G. Enterprise in
10 favor of the trust of C.F.E. to secure F.G.G.'s obligations in
11 connection with the purchasing agreement.

12 Q. And this is the equipment, correct?

13 A. Correct, yes.

14 Q. Okay. Starting with, it has been confirmed?

15 A. It has been confirmed by us that in executing the pledge
16 agreement, F.G.G. represented itself to be the owner and
17 possessor of the equipment which remains untrue in all aspects.

18 Q. Go ahead.

19 A. And we have informed you repeatedly, M.P.S.A. has not
20 agreed or consented to such pledge in any form or manner and
21 it's M.P.S.A.'s position that such pledge agreement is null and
22 void and ineffective.

23 Q. Okay. Now, in the third paragraph, what are you telling
24 them?

25 A. That during the meeting of March the 8th, 2011, you

1 promised to correct the foregoing misrepresentation with C.F.E.

2 Q. And did they?

3 A. Uh, not to my knowledge.

4 Q. Who promised to correct the misrepresentation?

5 A. I cannot remember who it would be.

6 Q. Somebody from F.G.G.?

7 A. Yes.

8 Q. Government's Exhibit Number 108.

9 Is that an e-mail to you from Mr. Miller copied to
10 Mr. Delgado?

11 A. (Nodding head affirmatively.)

12 Q. Is it?

13 A. Yes. Sorry.

14 MS. KANOF: We move that Government's Exhibit 108 be
15 admitted into evidence.

16 THE COURT: Ms. Franco?

17 MR. HANSHEW: No, objection.

18 THE COURT: GX-108 is admitted.

19 BY MS. KANOF:

20 Q. This March 21st regarding the pledge, correct?

21 A. Yes.

22 Q. And Mr. Miller writes to you, concerning your e-mail of
23 March 17th, correct?

24 A. Correct.

25 Q. And he says he's been instructed by F.G.G.'s board of

1 directors. Do you know if F.G.G. had a board of directors?

2 A. I don't know.

3 Q. Do you know?

4 A. I do not know if they did or didn't.

5 Q. Number two -- paragraph number two: M.P.S.A.'s denial of
6 authorization and knowledge of the pledge is the third and
7 latest attempt to disavow consent and knowledge of key
8 negotiations and commercial terms reached with C.F.E. in
9 conjunction with Mitsubishi Agent Hector Ponce and John Adams.

10 When did Mitsubishi ever negotiate with C.F.E.?

11 A. Uh, contractual wise --

12 MS. FRANCO: Objection, Your Honor. He can only
13 testify to what he did and not the entire company.

14 THE COURT: I'll sustain that objection.

15 BY MS. KANOF:

16 Q. Okay. But basically, what is Mr. Miller telling you?

17 A. He's saying that we endorsed the C.F.E. contract.

18 Q. Is that true?

19 A. Not to my knowledge, no. I cannot.

20 Q. 109?

21 THE COURT: Ms. Kanof, before you go on to the next
22 exhibit, let's break for lunch. And we'll come back at 2
23 o'clock, resume our proceedings then.

24 Ladies and gentlemen of the jury, if you'd be back in
25 the jury room by 2 o'clock, we'll resume our proceedings then.

1 COURT SECURITY OFFICER HEIDTMAN: All rise.

2 (Jury recessed for lunch.)

3 THE COURT: Mr. Beddard, if you would be back at 2
4 o'clock. We're in recess until two.

5 (Lunch break at 12:54 p.m. to 2:03 p.m.)

6 (Jury present.)

7 THE COURT: Be seated please.

8 Let the record reflect that all members of the jury
9 are present, the United State's through it's assistant United
10 States attorney is present, the defendant and his counsel is
11 present.

12 Kevin Beddard is on the witness stand.

13 Ms. Kanof?

14 KEVIN BEDDARD,

15 DIRECT EXAMINATION CONTINUED BY THE GOVERNMENT

16 BY MS. KANOF:

17 Q. Good afternoon Mr. Beddard. I have before you government's
18 Exhibit 109. It's not in front of you?

19 A. It is not.

20 Q. Okay. It is about an e-mail that you wrote.

21 A. Yes.

22 MS. KANOF: We move Government's Exhibit 109 into
23 evidence.

24 THE COURT: Ms. Franco?

25 MS. FRANCO: No, objection.

1 THE COURT: GX-109 is admitted.

2 BY MS. KANOF:

3 Q. Okay. So who did you write it to?

4 A. Fernando Gireud.

5 Q. And did you copy Mr. Delgado?

6 A. I did.

7 Q. This is still with regard, as far as the subject matter is
8 concerned, to what?

9 A. To the pledge of the equipment, the alleged pledge to the
10 equipment.

11 Q. And the date?

12 A. The date was the 24th of March, 2011.

13 Q. Okay. And this appears to be in response to something; is
14 that correct?

15 A. Yes. It was: Refer to your e-mail dated the 21st of
16 March, 2011.

17 Q. Okay. And let's go through how you are responding to the
18 e-mail.

19 Paragraph number one, what are you claiming?

20 A. Well, your response is so vague and convoluted and concerts
21 that merely unsupported assertions that only proves that FGG
22 attempted to pledge Mitsubishi Power Systems Americas equipment
23 without M.P.S.A.'s consent and actually against M.P.S.A.'s
24 express instructions for all purposes and without prejudice to
25 the specific comments below. M.P.S.A. rejects all of your

1 assertions in all respects.

2 Q. Paragraph number two, do you -- what do you address?

3 A. Basically, I reconfirm that M.P.S.A. did not authorize
4 F.G.G. to pledge the M.P.S.A. equipment in any form or manner,
5 much less consent to approve F.G.G.'s misrepresentation made in
6 writing before a Mexican notary.

7 Q. Let's skip to paragraph number four. What are you
8 asserting in paragraph number four?

9 A. F.G.G. has claimed to have documentation executed by
10 M.P.S.A. in addition to e-mails and notes which purportedly
11 prove that M.P.S.A. assumed obligations other than contained in
12 the subcontract of December the 18th and amended on the 1st of
13 May -- and amended by amendment number one thereafter on the
14 23rd of April, 2010.

15 Q. And then?

16 A. M.P.S.A. has repeatedly asked for copies of such document
17 and F.G.G. has constantly refused to provide it using all sorts
18 of excuses. If any such document exists, please provide it by
19 return to this e-mail and identify the specific language or
20 section which supports your assertions, otherwise, we will
21 continue abiding by the contracts actually executed by M.P.S.A.
22 and F.G.G. which is exactly what we have been doing so far.

23 Q. Number five?

24 A. You also maintain that key officers of C.F.E. participated
25 in discussions with M.P.S.A. In such a case, please provide the

1 names and titles of such C.F.E. officers and their direct
2 contact information. If you do not provide such names and
3 titles, we will assume that this is nothing but another false
4 statement.

5 Q. Okay. And then do you give them, on number six, a
6 deadline?

7 A. Yes. M.P.S.A. demands for F.G.G. to provide written
8 evidence that a misrepresentation was made, and I put the
9 deadline for March 17, 2011.

10 Q. Did you write this on your own or did you have assistance?

11 A. It was assistance.

12 Q. From whom?

13 A. Legal.

14 Q. I'm sorry?

15 A. From the legal department.

16 Q. From the legal department.

17 Government's Exhibit Number 110. Is that an e-mail
18 from Mr. Delgado in response to the preceding e-mail?

19 A. Yes.

20 MS. KANOF: We move that Government's Exhibit
21 Number 110 be admitted into evidence?

22 THE COURT: Ms. Franco?

23 MS. FRANCO: No, objection.

24 THE COURT: GX-110 admitted.

25 BY MS. KANOF:

1 Q. How does he respond to you?

2 A. He confirms that he's in receipt of the e-mail regarding
3 the pledge.

4 Q. And what has he done with it?

5 A. And then he said, I circulated and discussed it with the
6 appropriate parties and I'm being charged with preparing the
7 corresponding response. Said response involves and requires
8 C.F.E. participation at this time. Please be advised that on
9 behalf of C.F.E., we are committing to you to provide a formal
10 response by the end of business on Monday, March 28th, 2011.
11 Thank you in advance for your kind consideration.

12 Q. Did you get a formal response on March 28th?

13 A. I cannot remember if we did or didn't.

14 Q. Government's Exhibit Number 111. Is that another e-mail to
15 you on March 28th from Mr. Delgado?

16 A. Correct, yes.

17 MS. KANOF: Move that Government's Exhibit 111 be
18 admitted into evidence?

19 THE COURT: Ms. Franco?

20 MS. FRANCO: No, objection, Your Honor.

21 THE COURT: GX-111 is admitted.

22 BY MS. KANOF:

23 Q. Pursuant -- okay. And this is his response; is that
24 correct?

25 A. Yes.

1 Q. And what is he telling you?

2 A. That pursuant to your inquiry regarding the reference
3 matter, please find F.G.G.'s formal information clarification
4 request presenting to engineer, Ing. Eduardo Buendia from C.F.E.
5 I am asking engineer to provide response at his early
6 opportunity. Likewise, I'm attaching a pre-pledge inspection
7 report prepared by C.F.E., wherein the location and possession
8 of the equipment is clearly identified for your review. I hope
9 this will assist you in clarifying the issue in hand.

10 Q. Okay. So attached to 111 is a letter in Spanish, correct?

11 A. Correct.

12 Q. But it's on what kind of letter head?

13 A. It's F.G.G. letterhead.

14 Q. Okay. And attached to that is what?

15 A. It looks like information regarding to our scope of supply.

16 Q. But this is in Spanish as well?

17 A. Well, parts of it is, yes.

18 Q. It's not in English, is it?

19 A. Well, Mitsubishi M501F.

20 Q. I can't hear you. I'm sorry.

21 A. Basically the Mitsubishi name is in English, so...

22 Q. Okay.

23 Do you know -- is that a Mitsubishi document?

24 A. No.

25 Q. And it's been attached to this e-mail and this letter,

1 correct?

2 A. Correct.

3 Q. That was e-mailed to you?

4 A. Correct.

5 Q. Okay. Let me just quickly talk to you about this
6 inspection. Here it says from Mr. Delgado, likewise, I'm
7 attaching the pre-pledge inspection report provided by C.F.E.
8 okay. And is there any --

9 A. Can I --

10 Q. Yes.

11 A. Looking at this, I don't think I got this e-mail because
12 that's not my e-mail address.

13 Q. It has your name on it with no e-mail address?

14 A. That's why I'm just saying, right, that would not have gone
15 to me under that.

16 Q. Okay.

17 MS. FRANCO: Your Honor, based on that, I move that
18 this exhibit be removed. He can't identify it.

19 BY MS. KANOF:

20 Q. You don't have an independent recollection of this e-mail?

21 A. No.

22 Q. Okay. Let me ask you this then. Let me ask you about
23 inspections.

24 THE COURT: What about her motion that we withdraw --

25 MS. KANOF: We got it from information and there's not

1 always an e-mail address when there's a name. I think we can
2 clear that up later.

3 THE COURT: Okay.

4 BY MS. KANOF:

5 Q. You have no independent recollection of this, correct?

6 A. No.

7 Q. Do you know who Eduardo Buendia is?

8 A. Yes. He works for C.F.E. in the administration of
9 contracts in the reforma, right.

10 Q. The Reforma is one of the two of the C.F.E. buildings; is
11 that correct?

12 A. Yeah, Reforma do all of the contracts and everything. They
13 get formulated at that office. And then contracts then get
14 moved over to the projects in C.F.E., which is in a different
15 office in Mississippi office.

16 Q. What is the purpose of doing an inspection of equipment?

17 A. Well, it depends. There's lots of different inspections.
18 I do an inspection. I was looking for refurbishing what needs
19 to be done, so that's how I do them.

20 Q. Well, what is the purpose of the end user in inspecting
21 equipment?

22 A. Basically, here I can only think, is that he just makes
23 sure they exist.

24 MS. FRANCO: Objection, Your Honor. He said he would
25 have to speculate.

1 THE COURT: Sustained.

2 BY MS. KANOF:

3 Q. Were you aware of an emergency inspection that occurred on
4 this equipment in December of 2009?

5 A. Yes.

6 Q. And what do you remember about it?

7 A. I was asked by both Hector and John Adams, could I organize
8 inspections at Japan Takasago factory on the gas turbines and
9 also could I facilitate inspection entrance to the Dunkirk port
10 authority where the warehouse was within the bonded area within
11 the part of Dunkirk.

12 Q. And did you do that?

13 A. Yes, I did, but I had to get further information, because
14 in Takasago, it's my factor, I can facilitate, but because it's
15 in a different country in France I have no authority. So when I
16 asked the French authorities could I excerpted entrance, they
17 said we need passports, details, copies and everything, so we
18 can produce the proper documentation for the entrance.

19 Q. Okay. And -- what if anything did you think about the
20 inspection occurring at Christmastime?

21 A. Well at the time I thought it was unusual.

22 Q. Why?

23 A. Because it's Christmas.

24 Q. Well, the end user, when do they usually inspect the
25 equipment?

1 A. Well, normally before you get a contract.

2 Q. Before you get a contract?

3 A. Yeah.

4 Q. Okay. And when did the technical people -- who usually
5 inspects the equipment?

6 A. Basically, it would be a technical person and usually a
7 salesperson from our side, you know. It would be usually a
8 salesperson would visit with you, a technical person, right, and
9 possibly somebody from global sources, who can have the bill of
10 materials.

11 Q. Okay. And is Mr. Buendia a technical person?

12 A. Well, I know he is, right, just by his initials.

13 Q. Okay.

14 A. I think it's got "Ing.," which means he's an engineer, but
15 I know he's an engineer.

16 Q. Okay. Is he one of the individuals that you arranged to go
17 in and inspect the equipment?

18 A. Yes.

19 Q. Okay. Government's Exhibit 12, I'm going to display the
20 English version to you, show you that. Do you recognize your
21 name on this e-mail?

22 A. Yes, it's from me.

23 Q. And let me get to the text. What is it, do you know?

24 A. It's a letter from Marco to Mr. Buendia, engineer,
25 technical assistant manager, in relation to the property pledge

1 agreement related to the contract for procurement of the assets.

2 Q. Okay. Does this --

3

4 MS. KANOF: I'm sorry. Did I move it into evidence?
5 I forgot.

6 THE COURT: No.

7 MS. KANOF: We move admission of 112 and 112A, Your
8 Honor.

9 MS. FRANCO: No objection.

10 MS. KANOF: Okay.

11 THE COURT: GX-112 and 112A are admitted.

12 BY MS. KANOF:

13 Q. This appears to be a letter to Mr. Buendia from
14 Mr. Delgado, correct?

15 A. Yes.

16 Q. And Mr. Delgado is asking something of Mr. Buendia,
17 correct?

18 A. I think he's informing him of a clarification.

19 Q. That what? What is he informing him?

20 A. By request you kindly confirm as soon as possible that the
21 Federal Electricity Commission, as signee of the above-mentioned
22 instrument, verifies that according to paragraph 2.6 of the
23 contract in question, it's legal.

24 Q. What contract? Does it say which contract?

25 A. It doesn't say.

1 Q. The procurement of assets contract?

2 A. Yes.

3 Q. Okay. It says the assets verifies that according to that,
4 title to the assets will not be effective until the time of
5 payment.

6 A. At the time of the full payment of the cost in commercial
7 operation of the equipment which is C.O.D.

8 Q. Okay. It was -- again, was it the title to your equipment
9 that you were concerned with?

10 A. Basically, looking at this now, yes.

11 Q. Okay. And this is Mr. Delgado writing to Mr. Buendia,
12 correct?

13 A. Yes.

14 Q. Government's Exhibit Number 113, is that an e-mail from you
15 on March 29th?

16 A. Correct.

17 Q. Okay.

18 MS. KANOF: Move that 113 be admitted into evidence?

19 THE COURT: Ms. Franco?

20 MS. FRANCO: No, objection.

21 THE COURT: GX-113 is admitted.

22 BY MS. KANOF:

23 Q. Do you have it in front of you?

24 A. Yes.

25 Q. It begins with an e-mail from you, is that correct,

1 regarding the pledge?

2 A. Yes.

3 Q. So in the preceding e-mail from you, you asked -- you gave
4 a deadline for the documentation; is that correct?

5 A. Correct, March the 28th.

6 Q. And now you are writing what?

7 A. Referring to your e-mail dated March 24th whereby we
8 require you to respond to M.P.S.A.'s demand that F.G.G. provide
9 written evidence that the misrepresentations made by F.G.G.
10 regarding the equipment, including the invalidity of the pledge
11 as being corrected with C.F.E. and the trust by close of
12 business on the 24th -- 28th, extended by F.G.G. request to
13 close of business the 28th of March, 2011.

14 Q. And so no paperwork has been provided to you?

15 A. No.

16 Q. Have you gotten the handwritten notes that allegedly exist?

17 A. No.

18 Q. Have you gotten the e-mails that supposedly John Adams
19 wrote?

20 A. No.

21 Q. Have you gotten any of the contracts that supposedly have
22 Hector Ponce's and John Adams' initials all over them?

23 A. No.

24 Q. Have you gotten anything in writing the promise to clear up
25 this issue?

1 A. Uh, basically, no.

2 Q. Okay. And you wrote this and sent it to Mr. Gireud and to
3 Mr. Delgado on March 29th; is that correct?

4 A. Correct.

5 Q. Government's Exhibit Number 115. Do you recognize that as
6 an e-mail from you to Mace Miller copied to Mr. Delgado?

7 A. Yes.

8 Q. And what is the topic of this e-mail?

9 A. Collection rights.

10 Q. Back to that; is that correct?

11 A. Yes.

12 Q. And you address it to Mace Miller. What are you talking
13 about?

14 A. Can you confirm that M.P.S.A. will be directly copied on
15 the response from C.F.E. As far as your proposal meeting next
16 week in Orlando with regard to the pledge, I would like to look
17 at all of the documents relating to the pledge. I don't believe
18 I have everything I need over here. Please let me know your
19 availability.

20 Q. Government's Exhibit Number 117. Do you recognize that as
21 an e-mail from Mr. Delgado to you dated April 8th of 2011?

22 A. Yes, I do now.

23 Q. Okay.

24 MS. KANOF: We move that Government's Exhibit 117 be
25 admitted into evidence.

1 THE COURT: Ms. Franco, any objection to 117?

2 MS. FRANCO: No, Your Honor.

3 THE COURT: GX-117 is admitted.

4 BY MS. KANOF:

5 Q. Is this in response to you, this e-mail from Mr. Delgado?

6 A. (Reading silently.)

7 Q. You have asked that e-mail streams starts with an e-mail
8 from you on March 22nd of 2011, correct?

9 A. Correct.

10 Q. Or no, I'm sorry.

11 A. It says, reply by.

12 Q. March 17th of 2011, correct?

13 A. Correct.

14 Q. Okay. And it's an e-mail in which you are asking for
15 assignment of collection rights, correct?

16 A. Correct.

17 MS. FRANCO: Objection, Your Honor. Leading.

18 THE COURT: Sustained.

19 BY MS. KANOF:

20 Q. What were you asking for?

21 A. As per our request, please find attached the draft letter
22 for your submission on F.G.G. letterhead requesting the
23 authorization for assignment of collection rights for the
24 contract in favor of Mitsubishi Power System.

25 Q. And how did Mr. Delgado rescind -- respond?

1 A. Kevin, with regard to the topic, I spoke to Patrick
2 Altamura yesterday. Please visit with him regarding this.
3 Thank you.

4 Q. Did you visit with Mr. Altamura about that?

5 A. I did, yes.

6 Q. And what happened?

7 MS. FRANCO: Your Honor, if this answer calls for
8 hearsay, I'm going to object to it.

9 THE COURT: I'm sorry.

10 MS. FRANCO: Your Honor, she said, what happened with
11 her conversation with the -- Altamura, so presumably he's going
12 to respond as to what some other witness said or some other --

13 MS. KANOF: I'll withdraw the question.

14 THE COURT: All right.

15 BY MS. KANOF:

16 Q. Government's Exhibit Number 118. Is that an e-mail from
17 Mr. Delgado to you?

18 A. Yes.

19 MS. KANOF: We'd ask that 118 be admitted into
20 evidence.

21 THE COURT: Ms. Franco.

22 MS. FRANCO: No, objection.

23 THE COURT: GX-118 is admitted.

24 BY MS. KANOF:

25 Q. Mr. Beddard, Mitsubishi has been asking for information

1 about the pledge, correct?

2 A. Yes.

3 Q. And what is the date of this e-mail?

4 A. The date of this one is the 8th of April, 2011.

5 Q. And in response to your many requests for information about
6 the pledge, does Mr. Delgado send you this e-mail?

7 A. Yeah, I assume so.

8 Q. If you don't know, you don't know.

9 What did you tell him or what does he tell you?

10 A. He says, Dear Kevin, as discussed during our meeting on the
11 6th of April, 2011, C.F.E. has informed us that M.P.S.A. has
12 already been provided with all of the information related to the
13 contract via M.P.S.A.'s I.F.A.I. request. For this reason,
14 F.G.G. are will not process the request in question at this time
15 given it's redundancy.

16 Q. Okay. So do you remember meeting on the 6th of April of
17 2011?

18 A. No.

19 Q. Okay. And what is an I.F.I.A. request?

20 A. I don't know what that stands for, the initials.

21 Q. But he's telling you, we're not going to give you the
22 records because of some request Mitsubishi has made to the
23 Mexican government; is that what he's saying?

24 A. Apparently, so, yes.

25 Q. Where did you get that information to put it into this

1 e-mail?

2 MS. FRANCO: Objection, Your Honor. He didn't author
3 this e-mail.

4 MS. KANOF: I'm sorry.

5 BY MS. KANOF:

6 Q. Do you know where Mr. Delgado got the information?

7 MS. FRANCO: Objection. Calls for speculation.

8 MS. KANOF: Well, maybe he know.

9 THE COURT: Let's see. Maybe it does and maybe it
10 doesn't.

11 Without speculating, do you know where...

12 MS. KANOF: Right.

13 BY MS. KANOF:

14 Q. Do you know where he got that information?

15 A. It could only come from Mexico, C.F.E.

16 Q. Government's Exhibit Number 121. Do you recognize that as
17 an e-mail from Mr. Delgado to you?

18 A. Yes.

19 MS. KANOF: We'd ask that Government's Exhibit 121 be
20 admitted into evidence.

21 THE COURT: Ms. Franco?

22 MS. FRANCO: No, objection.

23 THE COURT: GX-121 is admit.

24 BY MS. KANOF:

25 Q. Okay. So this is -- what's the date?

1 A. The date is the 10th of April, 2011.

2 Q. And what is the purpose of this e-mail?

3 A. It's an e-mail from Marco myself: Please be advised after
4 visiting with C.F.E. and pursuant to your discussion last week,
5 F.G.G. continues to be very interested in exploring of -- in a
6 very short time the options discussed as being represented to
7 F.G.G. by C.F.E. top management, that all contract information
8 has been provided to M.P.S.A.; however, F.G.G. is not privy to
9 it nor in a position to confirm with it. Redactions are being
10 made. Thank you.

11 Q. Previous to that, had you written an e-mail to Mr. Gireud?

12 A. I don't know.

13 Q. Right here on this screen?

14 A. Oh, sorry. It won't scroll up.

15 Q. Okay. The bottom is the previous e-mail, the one about not
16 giving you any documents because the I.F.A.I. [sic] requests.
17 And then you responded in this e-mail. You see the regards,
18 Kevin Beddard?

19 A. Yes.

20 Q. So did you respond to Mr. Delgado on April 10th -- but
21 actually to Mr. Gireud?

22 A. I directed it to Fernando Gireud.

23 Q. Why did you do that instead of directing it to Mr. Delgado?

24 A. Because he's the lead for the F.G.G.

25 Q. And what did you -- how did you respond with regard to the

1 refusal to provide you documents because M.P.S.A. had sought
2 them otherwise?

3 A. I explained in there. I explained the discretion to inform
4 F.G.G. that, one, M.P.S.A. project management did not have any
5 of these documents and would contact our legal representatives
6 with regard to these mentioned submitted documents via M.P.S.A.,
7 I.F.A. [sic].

8 Q. Okay. And what else?

9 A. And I put a note, M.P.S. [sic] note: We will have our
10 legal representative confirm to F.G.G. directly with regard to
11 these mentioned submitted documents via M.P.S.A., I.F.A.I.

12 Q. The last line says could you please confirm. What are you
13 asking?

14 A. (Reading silently.)

15 Q. What matter are you talking about? Are you talking about
16 the whole contract or what matter are you talking about?

17 A. Basically, I'm looking for -- we require if F.G.G. could
18 confirm that these documents were complete without redaction and
19 inclusive of the annexes. So basically the full prime contract
20 included annexes.

21 Q. Because before did you have a concern about the annexes?

22 A. Well, again, I've always had a concern as we've mentioned
23 here. There was differences in the technical supply, right, who
24 supplied what and that will all be covered in their annexes.

25 Q. Government's exhibit -- let's see. I'm not sure if you're

1 copied on this. Yes, sir.

2 Government's government's Exhibit Number 122 is that
3 an e-mail to you and to Mr. Delgado both?

4 A. Yes. That's what it looks like, yes.

5 MS. KANOF: I'll move that Government's Exhibit 122 be
6 admitted into evidence.

7 MS. FRANCO: No, objection.

8 THE COURT: GX-122 admitted.

9 BY MS. KANOF:

10 Q. And what is the nature -- and it's from Patrick Altamura,
11 correct?

12 A. Correct.

13 Q. In-house lawyer for Mitsubishi?

14 A. Correct.

15 Q. And what is it regarding?

16 A. Marco, you called me last Thursday to request a meeting to
17 discuss possible ways for F.G.G. to cure the problems created by
18 F.G.G.'s unauthorized attempt to pledge M.P.S. equipment.

19 During the call, you expressed assurances that during the
20 meeting you would somehow see to it that the assignment of the
21 collection rights would be affected.

22 Q. Go on.

23 A. It is important to bear in mind, one, F.G.G. breach of its
24 obligations under the subcontract to securing the assignment of
25 collection rights in favor of M.P.S.A. and, two, F.G.G.

1 unauthorized attempt to pledge Mitsubishi's, M.P.S.A.'s
2 equipment at two distinctly different issues.

3 Q. Go ahead.

4 A. Despite numerous past assurances over the past year that
5 F.G.G. had filed the appropriate documents for the assignment
6 collection rights and the approval and the approval was
7 imminent, F.G.G. continues to be in breach of this important
8 material term of the subcontract.

9 Q. Can you continue, please?

10 A. For the avoidance of any misunderstanding, your invitation
11 to meet with F.G.G. does not change the concerns expressed by
12 M.P.S.A. and in Kevin's e-mail of the 8th of April -mail below.
13 F.G.G. continues to be in breach of obligations to secure the
14 assignment of Collection rights in favor of Mitsubishi.

15 Consequently, F.G.G. must expedite -- expeditiously
16 proceed with all diligence to submit the forms that were
17 prepared by M.P.S.A.'s outside counsel at your request to C.F.E.
18 and cause the assignment of collection rights in favor of
19 M.P.S.A. to be expeditiously approved by C.F.E. acknowledged by
20 the Comisión and affected by F.G.G.

21 Q. Government's Exhibit Number 123. Is this an e-mail from
22 Mr. Delgado to you and others?

23 A. Yes.

24 MS. KANOF: Move that 123 be admitted into evidence.

25 MS. FRANCO: No, objection.

1 THE COURT: GX-123 is admitted.

2 BY MS. KANOF:

3 Q. And how does Mr. Delgado respond?

4 A. Well, he responds to Patrick because it's Patrick. Thank
5 you forgetting back to me on the possibility of meeting to
6 resolve the issues related to the pledge and assignment of
7 collection rights between F.G.G. and M.P.S.A. You're e-mail
8 correctly reflects F.G.G.'s interest in addressing and resolving
9 the issues at hand, including, as it relates to the assignment
10 of collection rights; however, please note and confirm that as
11 part of your conversation, our conversation, we agree to
12 disagree on F.G.G.'s position regarding the validity of the
13 pledge. F.G.G. never accepted M.P.S.'s position as correct and
14 that F.G.G. shares the same position as C.F.E. regarding the
15 issue as presented by C.F.E. officials to M.P.S.A. counsel,
16 Mexico counsel, this past week.

17 Q. Go ahead.

18 A. We also discussed the need for you to visit with management
19 to decide on the feasibility of the proposed meeting in
20 tentative days of appropriate -- (mumbles). Please advise
21 regarding the -- next one.

22 Q. That's fine.

23 So the assignment of collection rights, it's now a
24 year and a half later, correct?

25 A. Yes.

1 Q. If you had this assignment of collection rights, the money
2 could not go into any other bank account than Mitsubishi's from
3 C.F.E., correct?

4 A. From my invoice, yes.

5 Q. And regarding the first cut of money, you were supposed to
6 get how much, 14-something-million?

7 A. Well, the initial was 16 million, because that was the
8 first invoice we put in from the first payment schedule. Then
9 the second payment schedule, what was done was 14 point, I don't
10 know, 5 or something.

11 Q. And you got how much?

12 A. 11.3 million.

13 Q. So, I'm no mathematician, but approximately how much less
14 did you get that you were supposed to get?

15 A. Over 3 million.

16 Q. And if you had assignment of collection rights within five
17 days as the prime contract said, would you have known where that
18 money came from and went?

19 A. Could you explain?

20 Q. If you had assignment of the collection rights and only
21 gotten \$11 million instead of \$14 million, it would have come
22 from C.F.E. correctly?

23 A. Well, it would have come from the Mexican bank, which would
24 be the --

25 Q. A trust?

1 A. The trust, yeah.

2 Q. Representing C.F.E.

3 A. Correct.

4 Q. Okay. And so then you -- who would you have been able to
5 complain to that you are not getting the right amount of money?

6 A. Basically then I would go back to F.G.G., first of all,
7 right, and say I put this in, we've got the collection rights,
8 can we go to C.F.E. and find out the reason why we have not
9 received our full amount as per our invoice?

10 Q. Did you ever find out why you didn't receive that full
11 amount?

12 A. Well, it was on a letter previously that said it was
13 financials were taken out and a fee of 1 million was taken out.

14 Q. Okay. And you protested that. Did you ever get back the
15 money that was owed to you?

16 A. Well, again, right, as I've stated, another negotiations
17 were taking place and then another payment schedule come out,
18 and actually then, right, I had to give actually 1.1 million
19 back in a credit, because the new payment schedule was due for
20 two invoices. So actually I was due 9 million, right.

21 Q. Government's Exhibit Number 124, in front of you.

22 A. Yes.

23 Q. Do you recognize that as an e-mail to you and Mr. Delgado
24 and others from Mr. Altamura?

25 A. Yes.

1 Q. Is that --

2 MS. KANOF: We move that Government's Exhibit 124 be
3 admitted into evidence.

4 THE COURT: Ms. Franco?

5 MS. FRANCO: No, objection.

6 THE COURT: GX-124 is admitted.

7 BY MS. KANOF:

8 Q. Is that a response to Mr. Delgado's previous e-mail?

9 A. That appears that part is sent back. Dear Marco, I
10 currently note I do not agree with the statements which you paid
11 on the third sentence of your -- of the first paragraph were
12 part of our conversation.

13 Q. So, previously, Mr. Delgado had said that there had been a
14 conversation about these matters and Mr. Altamura's disagreeing?

15 A. That appears so on this, yes.

16 Q. Government's Exhibit Number 125. Do you recognize this as
17 an e-mail from Mr. Delgado to Mr. Altamura and to you and
18 others?

19 A. What I could say as to the part I noticed, again, when it
20 goes into this, it doesn't show my e-mail so I can't say that.

21 Q. You had previously mentioned somebody named Andres?

22 A. Yes.

23 Q. Is he on this e-mail?

24 A. Yes.

25 Q. And who was Andres?

1 A. Andres Maynez (phonetic) was my fourth project manager with
2 C.F.E.

3 MS. KANOF: And we move, Your Honor, 125 into
4 evidence.

5 THE COURT: Ms. Franco?

6 MS. FRANCO: No objection, Your Honor.

7 THE COURT: GX-125 is admitted.

8 BY MS. KANOF:

9 Q. And what is the date of this?

10 A. The date is the 12th of April, 2011.

11 Q. All right. And is this from Mr. Delgado?

12 A. Yes.

13 Q. And what is he telling Mr. Altamura?

14 A. He's thanking him for his response saying that I thank you
15 for your response. I had a chance to review your latest e-mail
16 and I will defer to your better recollection. That being the
17 case, please note that both C.F.E. and F.G.G. differ from your
18 appreciation of the validity of the pledge as discussed by
19 C.F.E. with your Mexican attorneys, but nonetheless are
20 extremely sensitive to the importance of M.P.S.A.'s concern.
21 For this reason, it is F.G.G.'s sincere hope that we will still
22 meet and resolve the issues under consideration. I look forward
23 to hearing from you.

24 Q. Mr. Beddard, did you have any other involvement in this
25 matter?

1 A. No, because I left it to legal. It was purely a legal
2 matter. I needed to concentrate on the project, so I handed it
3 over to the legal department.

4 MS. KANOF: I'll pass the witness.

5 THE COURT: Ms. Franco?

6 MS. FRANCO: Thank you, Your Honor.

7 KEVIN JOSEPH BEDDARD,

8 CROSS-EXAMINATION BY THE DEFENSE

9 BY MS. FRANCO:

10 Q. Good afternoon, Mr. Beddard. I promise I won't keep you
11 very much longer.

12 A. Okay.

13 Q. Just a few questions. I wanted to clarify some things.

14 What it is is that you weren't a party to the teaming
15 agreement, correct?

16 A. Correct.

17 Q. And that was an agreement that was reached between
18 Mr. Gireud and Mr. Adams, John Adams?

19 A. Again, I wasn't party to it. I know Rick Williams was
20 involved and I know John Adams was. I don't know who the
21 parties for F.G.G. were.

22 Q. Okay. And you testified earlier, I think, yesterday and
23 today that you had looked it over to find out whether or not it
24 was feasible, if this is something that M.P.S.A. should do
25 because you had to have -- because you had this -- those

1 turbines available if one were to enter into a contract,
2 correct?

3 A. No. I said what I did when I got the subcontract. I did a
4 risk analysis, which I do. So I got the subcontract in December
5 and because it had a -- it says what -- one sentence in there
6 refers to the teaming agreement, as a risk analysis I have to
7 look at that document to see if there's any risk or potholes,
8 anything that can affect the subcontract.

9 Q. Okay. And from your recollection, now, some few years
10 later, after you looked at that teaming agreement, nothing
11 jumped out at you that made you concerned that this was a bad
12 risk for M.P.S.A., correct?

13 A. Basically, that was the assumption if that was held up.

14 Q. Let me see if I can get my exhibits back up.

15 Your Honor, if you'll just give me a second.

16 BY MS. FRANCO:

17 Q. I think it's already been admitted, but it's government's
18 Exhibit 12A, I believe, which is the subcontract. Do you see
19 that on your screen?

20 A. Yes, I do.

21 Q. Okay. And this is the English version of it. I imagine?

22 MS. FRANCO: If we haven't already, Your Honor, I'd
23 ask for the Spanish version to also be admitted.

24 THE COURT: Is that Exhibit 12?

25 MS. FRANCO: 12A. This is 12A and then 12 is the

1 Spanish version.

2 THE COURT: Yes, ma'am. 12 and 12A have both been
3 admitted.

4 MS. FRANCO: Thank you.

5 BY MS. KANOF:

6 Q. I'm scrolling down because through this contract, this
7 subcontract, and I know you have a difference of opinion as to
8 whether or not it's a real contract or not, but there's a
9 handwritten note at the bottom of it at the end of the contract.
10 Do you see that? I'm getting to it, I promise. Okay. This is
11 the English version.

12 And the Spanish version, it's actually handwritten
13 into the contract. But here it says where it's handwritten in
14 English it says, with respect to the signed subcontract, the
15 parties agree to check and amend the subcontract as needed and
16 to adjust the price according to the final arrangements for the
17 letter credit, cost, shipping delivery terms and any errors in
18 the document and adjustment based on final prime contract. You
19 see that, right?

20 A. I do, yes.

21 Q. Okay. So the subcontract in some ways it refers back to
22 the prime contract that C.F.E. and F.G.G. were going to enter
23 into, correct?

24 A. Could you repeat that?

25 Q. The -- based upon that written --

1 A. Could we go back?

2 Q. Uh-huh. Oh, I'm sorry.

3 Based upon that handwritten note -- it's typed in the
4 English version -- but in the handwritten note, it refers back
5 to that prime contract, correct?

6 A. Yes.

7 Q. Now you testified yesterday and I think sometime today as
8 well, that this is an unusual occurrence for you to be involved
9 in this three-party contract. And normally, what you would be
10 doing is you would be working directly with the customer,
11 correct?

12 A. Basically, the normal thing would be directly with the end
13 user or through the erection contractor, right. It was
14 installing all of the plans for the end user.

15 Q. Right. So you -- so this situation, where you have
16 basically a broker which would be F.G.G., this was an unusual
17 circumstance for you that you were having to use an intermediary
18 to talk to the customer who wanted your equipment, correct?

19 A. Correct.

20 Q. Okay. And you weren't a party to any of the conversations
21 that F.G.G. had with either your boss, Mr. Adams, or with the
22 consultant, Mr. Ponce, correct?

23 A. Correct.

24 Q. And that became apparently very true later on in this saga
25 between all of you-all regarding the installation of these

1 turbines, because you mentioned just a little while ago --

2 MS. KANOF: Objection, Your Honor. Compound question
3 and is there a question.

4 THE COURT: Well, I'll sustain it as to a compound
5 question. You ask one question then.

6 BY MS. FRANCO:

7 Q. You mentioned earlier the terms of kept changing, correct?

8 A. Yes.

9 Q. The original invoice that you said -- sent out, that wasn't
10 based on anything that was in the subcontract. That was
11 something that was told to you that to charge the 16 percent of
12 the overall contract price to C.F.E., correct?

13 A. Correct.

14 Q. And as a result of other individuals being involved in this
15 contract, those numbers were eventually reduced down, correct?

16 A. There's changes, yes.

17 Q. Yes. And so when you testify that the 11 million payment
18 that came in in March, at first you thought it had been shorted,
19 correct? In other words, M.P.S.A. should have gotten more than
20 \$11 million, correct?

21 A. Correct.

22 Q. But later on, because the contractual terms were changed,
23 payment terms were changed, that amount was actually an
24 overpayment, that the money that was made to M.P.S.A. was an
25 overpayment, correct?

1 A. Correct, yes.

2 Q. And you had to reimburse back to or give a credit, I should
3 say, back to F.G.G. and C.F.E. for that overpayment, correct?

4 A. Correct.

5 Q. And the \$7 million that was paid I believe in July, if I'm
6 not mistaken, that was the \$7 million that you had submitted on
7 your invoice, correct?

8 A. We have to just go back a little bit here, right.

9 The first invoice was for 16 million, right.

10 Q. Yes, sir. I'm asking you about the second. The second
11 payment that came in was the \$7-million payment, correct?

12 A. I can't remember if that was the second time or the third
13 payment time.

14 MS. FRANCO: Your Honor, may I have a moment and I'll
15 pull up the exhibit?

16 THE COURT: Yes, ma'am.

17 MS. FRANCO: I think it's Government's Exhibit Number
18 80. I'll move on, Your Honor, while --

19 BY MS. FRANCO:

20 Q. And I'll come back to you on that --

21 A. Okay.

22 Q. -- as to the \$7 million that came through.

23 Now, going back to my point though is, is that a lot
24 of -- from what you testified to yesterday about commercial,
25 people in commercial and marketing being involved in this, and

1 you're the tech guy; you're the engineer; you're the one that
2 needs to sign off on this, because these are your babies, these
3 turbines are yours to make sure that they go to a good home
4 right? Is that correct?

5 A. Basically, they are not mine. They belong to Mitsubishi.

6 Q. Right. But they were your responsibility.

7 A. Right.

8 Q. So you want to make sure the customer, the end user, is
9 happy with the equipment that you are responsible for, correct?

10 A. Correct.

11 Q. And so you didn't have any dealings with whatever was going
12 on, on the other part of this deal, the M.P.S.A. deal, as far as
13 the monies involved or pledges being made or anything like that.
14 You had no part in that conversation. Your conversation was
15 regarding the equipment and it's suitability for what Mexico,
16 what C.F.E. needed it for, correct?

17 A. No.

18 Q. It's not correct?

19 A. No, it's not correct.

20 Q. Okay. So tell me your -- your responsibility was to make
21 sure that all of this -- the contract was met as far as the
22 specifications were met, that it was ready to go, that you knew
23 that you were going to get paid -- obviously, M.P.S.A. --

24 A. That's what I just said.

25 Q. Right, for the equipment, correct, before you got moved on.

1 A. Correct.

2 Q. But as far as the terms between the parties, be it F.G.G.,
3 Mr. Gireud, Mr. Adams, Mr. Ponce, many of those terms you were
4 not privy to, correct?

5 A. Correct.

6 MS. FRANCO: May I have just a moment, Your Honor? I
7 think we found that exhibit.

8 BY MS. FRANCO:

9 Q. Now the other part of what was being contemplated at this
10 times was a long-term service agreement. I think we saw some
11 e-mail with regard long-term service agreement, correct?

12 A. Reference to it. But that part of the business is not
13 mine.

14 Q. Okay. So when you're looking at these documents and
15 figuring out if the turbines are going to make specs and what
16 Mexico, what C.F.E. wanted, the long-term service agreement,
17 that was not of a concern to you, correct?

18 A. Correct.

19 Q. Now I have a couple of questions, a few questions really,
20 about the gray market that you talked about that's going back to
21 the turbines that were available.

22 You had testified that the turbines were -- they had
23 already been manufactured and they had already been built for
24 another project that fell through, correct?

25 A. Correct.

1 Q. And when you were first brought into this, was it Mr. Adams
2 that brought you into this deal?

3 A. Uh, yes.

4 Q. He asked you to get an estimate for the, you know, the
5 refurbishment or making these three turbines work in the Mexico
6 project, correct?

7 A. Correct.

8 Q. Do you recall what that dollar amount was?

9 A. No, I don't.

10 Q. Okay. And you knew that or I suppose, and correct me if
11 I'm wrong, but Mr. Adams knew also that the two gas and the one
12 steam turbines were available, correct?

13 A. Yes. Yes.

14 Q. And do you know for how long those turbines had been
15 sitting around waiting for someone to purchase them?

16 A. The initial purchases was 2003, so that would be the
17 manufacturing date. I cannot say what the bill of sale was,
18 date, when they changed back to us.

19 Q. And if you don't know, then say you don't know, but do you
20 know whether or not M.P.S.A. ever received any type of monetary
21 compensation for those three turbines from the cancelled deal?

22 A. Oh, no.

23 Q. M.P.S.A. didn't receive any money from that?

24 A. No.

25 Q. At least to the best of your knowledge?

1 A. Oh, yes.

2 Q. So they had been in a -- I guess two were in a warehouse in
3 Japan and one was in France, correct?

4 A. The turbines were, but the auxiliaries were spread around
5 the world.

6 Q. But the meat of this contract are the turbines, right?
7 They're a big portion of the costs.

8 A. They don't work without the auxiliaries.

9 Q. Pardon me?

10 A. They can't twirl without the auxiliaries.

11 Q. Okay. But the turbines that I'm asking you about, the two
12 of them were in Japan and one in France, correct?

13 A. Correct.

14 Q. And have they been there for since 2003 when they were
15 manufactured and at some point in time that deal fell through?

16 A. No. When the deal -- the initial deal, they were on
17 shipment; the steam turbines were on a shipment from Japan to
18 Brazil. And what I'm told the deal went south, so A.D.F. called
19 the ship to go to Dunkirk and offload there.

20 Q. Okay. Just the one turbine, correct?

21 A. The one turbine, the steam turbine.

22 Q. Okay. And you talked about this idea of a gray market in
23 that the sense that, and correct me if I've misunderstood what
24 you were saying, but a gray market is that because these are
25 already manufactured, it's not like you're starting the deal

1 from brand new. You already had the equipment available,
2 correct?

3 A. Correct.

4 Q. And have you ever worked a deal before with a broker like
5 F.G.G. on a gray market deal?

6 A. Basically, not me, no.

7 Q. Okay. And earlier you testified -- I'm going back to
8 Government's Exhibit Number 12 that -- I'll pull up 12A -- that
9 this -- that the procurement, this subcontract, that the reason
10 why you had problems with it from the get-go was because of some
11 substantial terms were left out, correct?

12 A. Yes.

13 Q. And you talked about the specs of the equipment like the
14 specificity of them as to far as modifications that would need
15 to be made, because now these turbines are going to a different
16 climate, correct?

17 A. Correct.

18 Q. And also missing from there would be the payment schedule,
19 like how is it that M.P.S.A. is going to get paid for the
20 delivery of or the transfer of these turbines to C.F.E.,
21 correct?

22 A. Correct.

23 Q. And also where they're supposed to go, correct?

24 A. Correct.

25 Q. And how they're supposed to get there. That wasn't in the

1 contract either, correct?

2 A. Correct.

3 Q. But M.P.S.A. made this contract, correct?

4 A. Um --

5 Q. They drafted it, correct?

6 A. I do not know that.

7 Q. You don't know that?

8 A. (Shaking head negatively.)

9 Q. But M.P.S.A. signed the contract, correct --

10 A. Correct.

11 Q. -- and the amendment that was done later. So after you
12 have identified that, mailman, there's some problems here with
13 this subcontract, that amendment to the contract, that was also
14 prepared by an done by M.P.S.A., correct?

15 A. Correct.

16 Q. And at that point in time, whether or not anyone had gotten
17 a copy of the prime contract, that had already been discussed,
18 correct?

19 A. Many times.

20 Q. Many times. And, yet, they're -- yet, at this point in
21 time, at least from your recollection, no one had looked or you
22 had not looked at the prime contract, correct?

23 A. Correct. I had not looked at it.

24 Q. Pardon me?

25 A. You're correct that I did not look at that.

1 Q. And one of the things I just wanted to make clear is that
2 when you were testifying in direct, everything that's going on
3 here is what you -- what happened with you, not what Mr. Adams
4 was doing, not what Mr. Ponce was doing or what they were doing
5 somewhere else, correct?

6 A. Correct.

7 Q. Did you know that the prime contract called for the
8 turbines to be new, brand new, as opposed to I guess old but not
9 used?

10 A. Uh, you --

11 Q. Which I think is how you described it is that it was --
12 they'd never been used, but they weren't new, correct?

13 A. They were not newly manufactured.

14 Q. Pardon me?

15 A. They weren't newly manufactured.

16 Q. So you didn't know that the prime contract called for those
17 turbines to be --

18 A. I cannot remember.

19 Q. When you're looking at -- once you looked at the
20 subcontract, you identified that there were several problems
21 with it, I think you had indicated that you contacted
22 representatives back at M.P.S.A. with your concerns. And so my
23 question with regard to that, would that be Mr. Adams or
24 Mr. Ponce that you were talking to?

25 A. Yes, and the legal.

1 Q. And who?

2 A. And with legal.

3 Q. With legal, too.

4 Okay. And so the ones that are responding back to you
5 primarily during this early part of the contract, was that
6 Mr. Adams and Mr. Ponce?

7 A. Correct.

8 Q. Now if you know -- this is a big deal. It was \$120-million
9 deal, correct?

10 A. It was a deal.

11 Q. Right. Well, I guess it's relative, right, because you
12 probably do bigger deals.

13 A. We do.

14 Q. To me that's a big deal.

15 MS. KANOF: Objection, Your Honor. What's a big deal
16 to her?

17 THE COURT: So what's your objection?

18 MS. KANOF: It's not a question. It's a side comment.
19 It's evidence.

20 THE COURT: I'll sustain the sidebar objection.

21 BY MS. FRANCO:

22 Q. With the \$120-million deal, do you know whether or not
23 anyone on the commercial part of it would have gotten a bonus
24 for securing this deal for getting these turbines out of storage
25 and getting them out and operating? Do you know whether

1 Mr. Adams or Mr. Ponce would be financially compensated for
2 making this deal going through?

3 A. I have no knowledge of that at all.

4 Q. One of the things that concerned you also about the
5 contract was the subcontract, was that the big stick wasn't
6 there, the termination agreement or termination terms, correct?

7 A. Correct.

8 Q. And in fact there was a -- I think it's an arbitration
9 language in the contract, correct?

10 A. Correct.

11 Q. And from your -- based on your experience, that was a
12 problem for you, because there wasn't anything to force the
13 parties to do what they needed to do, correct?

14 A. Basically, yes.

15 Q. And when you went in and renegotiated part of the
16 subcontract by coming up with the amendment, there still wasn't
17 a termination agreement in there, correct?

18 A. You are correct, yes.

19 Q. And that was after you-all had problems with the terms with
20 C.F.E. and F.G.G., correct?

21 A. Correct.

22 Q. When you express your concerns at the subcontract, you
23 testified earlier, I believe yesterday, that you were the one to
24 implement the contracts, correct?

25 A. Correct.

1 Q. And if you didn't want a contract to be implemented, it
2 wouldn't be implemented, correct?

3 A. No. Basically, we have standard operating procedures. Now
4 basically -- and one of them is the hand over from commercial
5 and sales and marketing to projects to administrate, so they've
6 got to hand over the contract to us and it's got to be in full
7 form, evident, and also they've got to give us their risk
8 analysis of what happened getting this, so then we could look at
9 that, with it, and we've got everything so we can administrate
10 that contract. And basically, as you've just said, all of these
11 pieces went together.

12 Q. Right. So even though you, as the implementer of the
13 contract, and you didn't like the terms of the contract, in
14 fact, you didn't even think it was a contract, it still went
15 through because your boss, Mr. Adams, said he wanted it to go
16 through, correct?

17 A. Did it go through? I don't understand the question.

18 Q. Okay. Well, you got paid, M.P.S.A. got paid, correct, for
19 the turbines, even though they hadn't been delivered yet, but
20 the partial payments, the first two partial payments had been
21 made, correct.

22 A. We have to, right.

23 Q. Right. But the subcontract was signed back in December of
24 20 -- 2009, correct?

25 A. Correct.

1 Q. And the amendment was sometime later, correct?

2 A. That was in April --

3 Q. In April of 2010?

4 A. -- the following year, yeah.

5 Q. Right. So at that point in time, any error that you
6 thought might have been problematic with the subcontract, it was
7 the amendment to the contract, that was an attempt to fix some
8 of the problems in the subcontract, correct?

9 A. Correct. Yes.

10 Q. Okay. But from what you were testifying to just a moment
11 ago, there are still persisted problems with the contract,
12 correct?

13 A. Yes.

14 Q. One of the things you testified about yesterday was on the
15 delivery location. I asked you earlier before, that part of the
16 problems with the subcontract is that the delivery and location
17 wasn't in there, at least it wasn't described as to how the
18 turbines were supposed to get to Mexico, correct?

19 A. Correct.

20 Q. And on that -- you testified yesterday that John Adams had
21 told you to -- that that was going to be a second phase of the
22 contract?

23 A. Yes.

24 Q. And so he instructed you to not worry about that part, that
25 that -- that there would be a separate contract with regard to

1 the delivery as far as who is responsible for it and how much
2 M.P.S.A. would get paid for it?

3 A. I couldn't say not that he said do not worry, right,
4 because I always worry because they're my babies, as you said.

5 Q. Okay. But he told you not to worry about it. It was going
6 to be handled in a second contract?

7 A. Yes, which would be a sale, a change order.

8 Q. A change order. Okay.

9 When you were testifying earlier, you talked about
10 that I think you said that there had been five project managers
11 on this Agua Prieta project, correct?

12 A. Correct. Since it finished, but, you know.

13 Q. Right. That's what I was going to ask you. So it's
14 finished, right?

15 A. Yeah, I finally completed it.

16 Q. So you found a home for the turbines, which was originally
17 contemplated back in 2009, correct?

18 A. Yes, the same home.

19 Q. The same home?

20 A. The same home.

21 Q. A lot of your e-mail correspondence that you had went
22 directly to Mr. Gireud as the managing partner of F.G.G.,
23 correct?

24 A. Correct.

25 Q. And you said that was pursuant to protocols within your own

1 company, correct?

2 A. Correct.

3 Q. And as far as you could tell, that Mr. Gireud was an active
4 participant in trying to make this deal happen between C.F.E.,
5 F.G.G. and M.P.S.A., correct?

6 A. I would hope so, yes. That's the intention.

7 Q. And you mentioned, also, that your own internal controls
8 are, I guess protocol, is a lot of times you're supposed to copy
9 in your higher-ups in some of your e-mails, but in some of your
10 e-mails you don't do that. Some of your e-mails were without
11 all of that extra language that was on the bottom; is that
12 right? So sometimes you would follow that protocol and copy in
13 every one in the company, and other times it would be an e-mail
14 from you to Mr. Gireud or to Mr. Adams or to Mr. Ponce or...

15 A. If it was an official mail, then we have set people on the
16 copy list, right. So the copy list would be saying they need to
17 be on the copy list so you put them on.

18 And depending on the subject matter, right, if it was
19 a technical, say electrical, I put the electrical engineer on
20 the copy. If it was mechanical, I put the mechanical engineer,
21 except -- so relevant people could change on the copy list.

22 Q. In other words, it would change as far as it wasn't a set
23 protocol, it would depend on what the circumstances are and what
24 the subject matter was?

25 A. It was a minimum protocol then you could add in the

1 different names relative.

2 Q. The assignment of collection rights, we heard a lot of
3 testimony about that. Eventually, the assignment of collection
4 rights, in other words, the ability for M.P.S.A. to get paid
5 directly from the trust in Mexico, that was eventually
6 effectuated, correct?

7 A. No.

8 Q. It never was?

9 A. It never was.

10 Q. The -- when you were sending your invoices to F.G.G. to get
11 paid and you said that you based it off of because you didn't
12 have a payment schedule at the very beginning, so you were
13 basing it off of what was common -- well, I think there was
14 something in there about two months after signing the contract,
15 so you're basing it upon that, correct?

16 A. Correct.

17 Q. And then that's when the other part of M.P.S.A. got
18 involved and they renegotiated as far as when or how much --
19 when you were supposed to invoice and how much F.G.G. was
20 supposed to pay you, correct?

21 A. No. First part was the -- for the contract there. There
22 was one payment schedule, so we invoiced to that payment
23 schedule, right, which was the 16.9 million, right. We didn't
24 get paid that amount.

25 Q. Right.

1 A. Then there was negotiations in that with the parties. And
2 then a new payment schedule would come out, an agreement that we
3 would get paid the 14.5 million, right, so again another invoice
4 went out. And then we didn't get paid again, right, or we got a
5 reduced amount of 11 million, with it. And then, why, and then
6 negotiations went on again, and then another payment schedule
7 would come out, right, and again, then I had to send in to the
8 amount of 11 million, which was received, and we need another 9
9 million to make us whole for that first invoice.

10 Q. Okay. But all of those terms with regard to the payment
11 schedule, that was being handled by Mr. Ponce and Mr. Adams,
12 correct?

13 A. Correct.

14 Q. So you weren't a party to that?

15 A. No.

16 Q. And so when you were sending the invoices out --

17 MS. KANOF: Your Honor, I'm going to object to
18 assuming facts not in evidence, because Mr. Adams left before
19 the first amendment, and so he couldn't possibly have been
20 participating in all of the negotiations for the changes.

21 THE COURT: All right.

22 MS. FRANCO: The change in payment --

23 THE COURT: Ms. Franco?

24 MS. FRANCO: Pardon, me?

25 THE COURT: Ms. Franco, response to Mr. Kanof?

1 MS. FRANCO: Well, Your Honor, I'm just asking. He
2 was the one who was there, and I said Mr. Adams and Mr. Ponce,
3 so I mean he responded to that and that -- another part of
4 M.P.S.A. was working on negotiating the payment reductions.

5 THE COURT: All right.

6 BY MS. FRANCO: So whether it be Mr. Adams, Mr. Ponce or
7 Mr. Jones, somebody else at M.P.S.A. was negotiating with F.G.G.
8 to reduce the amount of payment being paid -- made from F.G.G.
9 to M.P.S.A., correct?

10 A. Of the payment schedule --

11 Q. Right.

12 A. -- reduction or an increase.

13 Q. Right. So that the schedule was negotiated by somebody
14 else, correct?

15 A. Correct.

16 Q. You testified earlier that your -- there was an insecurity,
17 because money was getting paid to M.P.S.A. from F.G.G., but you
18 were concerned because of the changes that were made in the
19 payment schedule. And as far as you shipping or having somebody
20 receive the equipment, you said that you would want the title to
21 transfer once you were paid in full; is that right?

22 A. That's from the first contract. That's -- the title would
23 never change hands until the last payment was received.

24 Q. Okay. And change hands meaning the title to the equipment,
25 correct?

1 A. Correct.

2 Q. Because the actual equipment would need to get to Mexico
3 before that happened, correct?

4 A. Correct.

5 Q. And the big chunk of payment that was outstanding at the
6 time that this contract ended, which is in sometime in 2011, I
7 believe, the greatest portion that was going to be paid to
8 M.P.S.A. was yet to be paid, and that would be once you-all
9 released the turbines for someone to pick them up or you-all
10 would have shipped them for an additional sum of money?

11 A. It was prior to that.

12 Q. Right. So you would have gotten a big chunk if this
13 contract had gone through on that third payment, that's where
14 the bulk of the money would have come in, correct?

15 A. Yes.

16 Q. And the bulk of the money would have come in prior to the
17 actual shipment of the turbines to Mexico, correct?

18 A. Correct.

19 Q. And at that point in time, they would be in Mexico,
20 correct?

21 A. No.

22 Q. Well, assuming that you got paid on that third installment.
23 Okay? Follow me here. Assuming you got paid on that third
24 installment, those turbines would have been located at Agua
25 Prieta, correct?

1 A. We would release them, right, for pick-up.

2 Q. And they would have been delivered to Mexico, either by
3 you-all with extra money being paid to you or the F.G.G. or
4 C.F.E. would have paid somebody to ship it to them, correct?

5 A. Well, it wouldn't have been us, because we did not get a
6 change order.

7 Q. Right. But I'm saying if that had happened.

8 A. If that had happened --

9 Q. Right.

10 A. -- and we got that and we got that payment, then yes we
11 would have shipped it.

12 Q. Okay. So when the actual equipment made it to Mexico on
13 the payment schedule, the purchaser would still owe M.P.S.A.
14 money after the turbines had actually gotten to the plant,
15 correct?

16 A. Correct.

17 Q. And the actual title to the equipment would not transfer
18 until M.P.S.A. had been paid in full?

19 A. Correct.

20 Q. And the information that was related to you with regard to
21 this pledge agreement that C.F.E. had regarding the M.P.S.A.
22 equipment, everyone made it clear that the actual, physical
23 title to the equipment would not transfer to C.F.E. until
24 M.P.S.A. was paid in full, correct?

25 A. Could you rephrase that?

1 Q. The pledge agreement, you testified --

2 A. Yeah. (Mumbles.)

3 Q. Pardon me?

4 A. I am not part of the pledge agreement.

5 Q. Right. But you testified about it earlier today about
6 the -- that there was some sort of effort, from your point of
7 view, to pledge the equipment to C.F.E.?

8 MS. KANOF: Objection, Your Honor. That's
9 mischaracterizing anything he said. He didn't ever say --

10 THE COURT: I'm going to overrule the objection. He
11 talked about it in those e-mails, so she can cross him.

12 BY MS. FRANCO:

13 Q. So you remember what we're talking about, the e-mails
14 towards the end of your dealings with F.G.G., you're asking
15 about this non-possessory pledge agreement, correct?

16 A. I'm asking about the pledge agreement, but I don't have the
17 content of the pledge agreement.

18 Q. Right. But in the e-mails that you got, back from -- well
19 C.F.E. and also from F.G.G., was that the title was very clear
20 that title to the turbines would not transfer until they'd
21 been -- until you-all had been paid in full, correct?

22 A. That's what it said, yeah.

23 MS. FRANCO: May I have just a moment, Your Honor?

24 THE COURT: Ms. Franco, why don't we go ahead and take
25 a break.

1 Ladies and gentlemen of the jury, we'll recess for
2 15 minutes. If you would be back in the jury room at 3:30,
3 we'll resume our proceedings at 3:30.

4 COURT SECURITY OFFICER HEIDTMAN: All rise.

5 (Break at 3:17 p.m. to 3:34 p.m.)

6 (Jury not present.)

7 THE COURT: Ms. Kanof, you say you didn't think we
8 would do go to the 30th?

9 MS. KANOF: I don't think so.

10 THE COURT: More or less, do you have a new guess as
11 to when we'll be done?

12 MS. KANOF: Do I have any guess? I'd need a calendar,
13 but I don't think it will go a third week.

14 THE COURT: Just two weeks? That might make the Mayor
15 of Anthony feel a little better.

16 MS. KANOF: Oh, it's for the Mayor of Anthony? I've
17 always thought it would be a two-week trial. It's the defense
18 that's talking about the extra week, so what you're asking --

19 THE COURT: Let me ask.

20 MR. HANSHEW: Two weeks at the far end.

21 THE COURT: Okay. Thank you.

22 MS. KANOF: But I don't think you have an obligation
23 to the Mayor of Anthony.

24 THE COURT: I don't. I'm looking at the paper voir
25 dire. The Mayor says this is the accountant for the city, who

1 does all of the payroll. Paper voir dire says she's a clerk and
2 her concern was her pregnant daughter. So where in all of that,
3 where we can do something about it, that we can figure out that
4 she's the accountant? The daughter was supposed to have the
5 baby on the 29th, something like that, 28 or 29th.

6 All right.

7 (Jury present.)

8 THE COURT: Let the record reflect that all members of
9 the jury are present, the United State's through its assistant
10 attorney's present, the defendant and his counsel are present.

11 The witness, Mr. Beddard, is on the witness stand.

12 Ms. Franco?

13 MS. FRANCO: Thank you, Your Honor.

14 CROSS-EXAMINATION CONTINUED

15 BY MS. FRANCO:

16 Q. All right. Mr. Beddard, I found it. It's Government's
17 Exhibit Number 82, which is the -- is it up on your screen?

18 So this is the second invoice for the payment; do you
19 see that?

20 A. I do.

21 Q. So you testified on direct examination that the amount due
22 to M.P.S.A. was \$7 million, correct?

23 A. Could you go down there?

24 Q. Yes, sir.

25 A. Yes.

1 Q. And this was sent, looks like it's dated May 17th, but this
2 was for the July 6th payment. That's when you believed it was
3 supposed to land in M.P.S.A.'s bank account, correct?

4 A. Correct.

5 Q. I wanted to talk about the contract amendment again for
6 just a second, which is Government's Exhibit Number 72. Do you
7 remember looking at this before?

8 A. I do.

9 Q. It's dated in April of 2010. And in this it talks about
10 the equipment price. And this is the agreement that still had
11 some problems with it. We've already talked about it, so we
12 won't beat that dead horse. There's still problems with this
13 agreement, correct?

14 A. Yes, but it's a lot better agreement now.

15 Q. Under -- I believe it's on page two of two, and it has the
16 payment dates and disbursements. I direct your attention to the
17 middle of the page where it says third payment and then it's the
18 \$54 million, \$54,600,000?

19 A. Correct.

20 Q. And that says, prior to the embarkment of the equipment,
21 meaning before the equipment is shipped, right?

22 A. Correct.

23 Q. And so when the equipment is shipped, what's still owed to
24 M.P.S.A. even though the equipment is no longer in your custody,
25 is approximately -- it looks like it's about almost \$18 million,

1 correct?

2 A. Correct.

3 Q. Is that correct?

4 A. Correct.

5 Q. Great.

6 You testified, and we talked a little bit about it a
7 little while ago was, about that teaming agreement which is
8 Government's Exhibit Number 7. I'm showing that to you now.
9 It's already been admitted. And you'd indicated that you'd
10 looked at it briefly to find out whether or not this would be a
11 good deal for M.P.S.A., correct?

12 A. Right.

13 Q. And in your direct examination yesterday, Ms. Kanof had you
14 look at a portion of it, which is page four under paragraph two
15 where it says mutual obligations. And she read to you yesterday
16 that it says, in the middle, probably, fourth line down,
17 additionally, F.G.G. shall cause its outside legal counsel,
18 Marco Delgado, to assemble all of the documentation required by
19 the R.F.P., which is the request for proposals for the C.F.E.
20 job, yes?

21 A. I have to read.

22 Q. That's what an R.F.P. stands for, right?

23 A. Right.

24 Q. Okay -- and ensure that all of the certifications and
25 formalities had been met. And then it also says F.G.G. will

1 also provide any letters of credit required by the R.F.P. for
2 the supply of the equipment and service and cause the financing
3 required by the R.F.P. to be provided, correct? Do you see
4 that?

5 A. Correct.

6 Q. And that's what she had you read yesterday, correct?

7 A. I can't remember reading it yesterday.

8 Q. What's the rest of that sentence?

9 A. Or cause C.F.E. to (mumbles) its requirements as
10 appropriate.

11 Q. Correct. And so she didn't have you read that yesterday,
12 correct?

13 A. To be totally honest, I can't remember.

14 Q. But it certainly was in the teaming agreement that it would
15 be letters of credit or F.G.G. would try to get C.F.E. to waive
16 that requirement?

17 A. I did not formulate this, so I can't have an opinion of the
18 thought process behind it.

19 Q. Right. But that's what the words say in this teaming
20 agreement, correct.

21 A. That's what it says.

22 Q. Okay. You mentioned earlier that John Adams left the
23 company at some point in time. Do you recall when this
24 happened?

25 A. It was in April term 2011. I think it was around about the

1 16th, but I'm not sure, mid April.

2 Q. So John Adams was around for the agreement, this amendment
3 or the supplemental agreement to the subcontract with F.G.G.,
4 correct?

5 A. Well, on the 23rd it was processed, so I don't know when it
6 started. I remember that Potter (phonetic) sent a letter with a
7 draft, so whatever that date was. I don't know.

8 Q. Okay. Do you want me to go back to government's
9 Exhibit 72? I think it has a date in there.

10 Do you see a date up at the top where it says 4-23,
11 2010?

12 A. That's when it was executed.

13 Q. Okay. That's what I was talking about?

14 A. Oh.

15 Q. So Mr. Adams was still with M.P.S.A. --

16 A. No.

17 Q. Okay. So he -- because you testified that he left in April
18 of 2011 and so this would be prior to that?

19 A. It must have been 10, sorry.

20 Q. So when did he leave?

21 A. I'm not sure.

22 Q. Okay. And Mr. Ponce, was he still employed as a consultant
23 during this period of time?

24 A. I do not think so, but again I don't know.

25 Q. But again this amendment to this subcontract was negotiated

1 with between F.G.G. and M.P.S.A., you're not sure of the
2 principles of Mr. Ponce and Mr. Adams were employed with
3 M.P.S.A.?

4 A. Correct.

5 Q. You said earlier that through your efforts and efforts of
6 other individuals at M.P.S.A. it sounds like -- and C.F.E. and
7 F.G.G. -- that everybody wanted this contract to work out,
8 because that's the M.P.S.A. way. That's what you testified to;
9 is that correct? Is that a "yes"?

10 A. Yes.

11 Q. So that was all of the correspondence to and from trying to
12 clarify these terms was effort on everyone's part to make sure
13 that the deal went through?

14 A. I would say so, yes.

15 Q. Because it was advantageous for M.P.S.A. for this deal to
16 get approved, worked out and finished, correct?

17 A. Well, yes.

18 Q. Right. And C.F.E. is a big customer of M.P.S.A., correct?

19 A. Yes. Oh, no. Sorry. No.

20 Q. They're not?

21 A. No.

22 Q. Because you testified --

23 A. M.S. -- Mitsubishi, they're a big customer and globally
24 for Mitsubishi Heavy Industries, our parent company.

25 Q. Okay. So the parent company and C.F.E., they had a desire

1 to have a good working relationship, because it was mutually
2 benefit to both of them, correct?

3 A. I can't answer to them.

4 Q. Is it beneficial to M.P.S.A. to have a success with this
5 contract?

6 A. That would be the case.

7 Q. You testified also about being present -- well, at least
8 coordinating, and I'm going to ask you if you were present, but
9 coordinating the equipment inspection in around Christmastime of
10 2009; is that right?

11 A. Correct.

12 Q. And you -- the plant in Japan that you refer to that as
13 your plant, so there wasn't any problem coordinating a site
14 visit there, correct?

15 A. Correct.

16 Q. And how about the one in France? I know that you testified
17 that passports were needed and the factory was closed, but did
18 that eventually occur? Was there an investigation in France?

19 A. It is not a factory. It's a port. It's a port in France.
20 And it's a warehouse within the bonded area where you can go
21 none tax, free, where things are put in there because it's not
22 imported into the country, so there's special restrictions.
23 Nobody can go in there without government authority.

24 Q. And were you able to coordinate getting the authority for
25 that site visit to occur?

1 A. Yes.

2 Q. And were you present for that site visit?

3 A. No, I was not.

4 Q. Was anyone from M.P.S.A. present for that site visit?

5 A. Our representative in Dunkirk, right, and in Paris.

6 Q. Was present?

7 A. Was present.

8 Q. And that would have been with the officials from C.F.E.,
9 their representatives, correct?

10 A. Yes.

11 Q. Was anyone from F.G.G. present for that?

12 A. Not to my knowledge.

13 MS. FRANCO: May I have just a moment, Your Honor?

14 THE COURT: Yes, ma'am.

15 BY MS. FRANCO:

16 Q. Follow up question to my question regarding the benefit to
17 Mitsubishi for this deal to go through.

18 Was this the first time that Mitsubishi M.P.S.A. and,
19 I guess it's Florida, that they had a contract of this size of
20 this importance in Mexico?

21 A. It was our first direct contract in Mexico, yes.

22 Q. Okay. And so was that important for it to be successful
23 because it was the first contract?

24 A. No. All contracts are wanted to be successful.

25 Q. This was your first contract with a governmental authority

1 in a foreign country?

2 A. In Mexico, yes.

3 Q. All right. So it was important to M.P.S.A. America,
4 Mitsubishi America, for this deal to get done and be successful
5 with the hopes perhaps that there would be more business
6 generated from that relationship between C.F.E. and M.P.S.A.?

7 A. No, I wouldn't say that. Every contract stands on its own
8 merits for succession. And again this was gray market. We
9 didn't have anymore gray market.

10 Q. But you certainly were in a position or your company was in
11 a position to build new turbines, so if C.F.E. needed, let's
12 say they needed no more gray market, so they want to create a
13 turbine for their use, if they have a good working relationship
14 with M.P.S.A., would they not go back to M.P.S.A. for that?

15 A. No, we go through Mexico office, with Mexico -- Mitsubishi
16 Corp. And then to put an A.M.P. (phonetic) with them and it
17 would go through that process.

18 Q. So you thought this was a one-shot deal for work with
19 Mexico?

20 A. My personal opinion is that contract -- I've got to make
21 that contract work. I've got to make the units to get there,
22 I've got to install it to make sure they install it correctly,
23 commission correctly, and produce, right, to our performance
24 guarantees.

25 Q. Right. I guess maybe I'm asking the wrong person when

1 other individuals for -- who worked at M.P.S.A. come in, I can
2 ask them.

3 MS. KANOF: Objection, Your Honor. Sidebar.

4 THE COURT: Sustained.

5 BY MS. FRANCO:

6 Q. You weren't in on the commercial aspect of it or the sales
7 aspect. You've already testified to that, correct?

8 A. That's correct.

9 Q. Okay.

10 MS. FRANCO: That's all I have, Your Honor. Pass the
11 witness.

12 THE COURT: Thank you, Ms. Franco.

13 Ms. Kanof.

14 KEVIN JOSEPH BEDDARD,

15 REDIRECT EXAMINATION BY THE GOVERNMENT

16 BY MS. KANOF:

17 Q. Agua Prieta, when did it get up and running?

18 A. It got C.O.D.'d on August the 12th of this year.

19 Q. Last month?

20 A. Yes.

21 Q. And this contract was in 2009?

22 A. The initial first contract, yes.

23 Q. Was it up and running on the initial contract?

24 A. No.

25 Q. Did F.G.G. have anything to do with the contract that got

1 it up and running?

2 A. No.

3 Q. So Ms. Franco asked you about the first amendment. Let me
4 go first to the subcontract.

5 Oh, no, that's the first amendment. I forget.

6 I'm going to show you the Spanish version that's been
7 admitted into evidence. She was showing you the English version
8 of the contract, because there's some handwriting at the bottom
9 of it, of the English version of the subcontract.

10 Is it up there? Yeah. Okay.

11 And I think you did read this before, but first of
12 all, did Mr. Adams or Mr. Ponce have anything to do with signing
13 this?

14 MS. FRANCO: Objection, Your Honor, as to whether or
15 not he knows.

16 BY MS. KANOF:

17 Q. Did they sign it?

18 A. They did not sign it.

19 Q. And with regard to this little amendment, it's not really
20 an amendment to this handwriting on the bottom of the original
21 Spanish version, what does it say?

22 A. With respect to the signed subcontract, the parties agree
23 to check and amend the subcontract as needed and to adjust the
24 price accordingly to the final arrangements for the letter of
25 credit cost, shipping and delivery terms, and any errors in the

1 document and adjustments based on the final prime contract.

2 Q. Okay. And so then when you go to Government's Exhibit
3 Number 70 -- that was number -- the first amendment number 72 --
4 is there anything -- I'm going to let you look at it for just a
5 second, because I've been told I'm scrolling too fast. So let
6 me first look at the first paragraph.

7 One of the changes was it's no longer 103 million;
8 it's a 102 million, correct?

9 A. Correct.

10 Q. Okay. Let me ask you, in the end, Ms. Franco showed you a
11 payment schedule, and I believe -- yes, she showed you this
12 payment schedule that's in here. Was the contract price still
13 102 even when you got to this page?

14 A. Well, according to the -- yes, it should have been.

15 Q. So that didn't change. So how did you make up the
16 \$3 million that you didn't get up -- that you didn't get on the
17 first -- when you are supposed to get the 14 point whatever and
18 you only got 11.3, how did you make up that \$3 million or did
19 you ever get it back?

20 My question is, was it made up in the third payment?

21 A. Basically, it would have been readjusted in the payments
22 here, right.

23 Q. It would or would not?

24 A. It would have. It's 102 not the 103, that million would
25 not be there.

1 Q. So regardless of the fact that you're now agreeing -- I
2 mean the first payment has already happened, right, by the time
3 that this is written; is that correct?

4 A. The 11.3 million.

5 Q. So what else, if you are amending it, what other number
6 could you use?

7 A. That's all I could use.

8 Q. But with regard to the fact that you are supposed to get
9 \$14-plus-million, you're still going to get the 102 million,
10 correct?

11 A. Yes.

12 Q. So you didn't just agree that that was the correct number
13 by putting it into this chart?

14 A. I did not put it into that chart.

15 Q. Okay -- or whoever -- you're still going to be made whole?

16 A. Correct.

17 Q. Also, now, again, scrolling slowly if you could do it
18 yourself, I'm asking you to look to see pursuant to the original
19 subcontract that you could amend it, anything in here about a
20 pledge agreement?

21 A. Not to my knowledge. I can't see anything.

22 Q. Is there any other amendment than this?

23 A. No, this was the only amendment.

24 Q. There's no amendment that says we agree to a pledge?

25 A. No.

1 Q. Is there -- are you aware of any agreement that C.F.E.
2 entered into to waive the letters of credit?

3 A. To my knowledge, I'm not aware of anything.

4 Q. With regard to -- I have --

5 MS. KANOF: May I go to my place, Your Honor? I
6 forgot some exhibits.

7 THE COURT: Yes, ma'am.

8 MS. KANOF: Hold on, Your Honor. It seems to have
9 disappeared.

10 BY MS. KANOF:

11 Q. I previously showed you, but we did not admit into
12 evidence, Government's Exhibit -- there's a 50 and a 50A. This
13 is 50A. And do you recall my showing you this letter in English
14 and showing you the date March 23rd of 2010, a letter from
15 Mr. Delgado to Mr. Buendia?

16 A. I have. It's in there.

17 Q. Just to identify Government's Exhibit 50A, is it an e-mail
18 from Mr. Delgado to Mr. Adams? I'm just asking you to identify
19 whether it's an e-mail, not the contents of the e-mail, just if
20 it's an e-mail.

21 A. It's an e-mail there from Marco Delgado to -- it says John
22 Adams, because there's no e-mail address there.

23 Q. I'm asking you, it says John Adams?

24 A. Yes.

25 Q. And attached is a letter to Mr. Buendia. This is the

1 English version?

2 A. Could you scroll down to the bottom?

3 Yes, it's from --

4 MS. KANOF: May I approach the witness, Your Honor. I
5 want him to look at two documents at the same time.

6 BY MS. KANOF:

7 Q. I'm going to hand you -- and we're going to have Mr. Adams
8 testify in a few second -- I'm going to hand you government's
9 Exhibit 49 and Government's Exhibit 50A. I need to actually
10 give you the Spanish version.

11 MS. KANOF: May I approach, Your Honor?

12 THE COURT: Yes, ma'am.

13 BY MS. KANOF:

14 Q. Government's Exhibit 50, the Spanish version, if you would
15 look at it and then look at Government's Exhibit 49. Are there
16 unique -- are both -- do both exhibits contain letters from
17 Mr. Buendia?

18 A. Correct, yes.

19 Q. Do both exhibits carry the same date?

20 A. 23rd of March, 2010.

21 MS. FRANCO: Objection, Your Honor. It has not been
22 admitted into evidence.

23 MS. KANOF: I'm not asking for the contents.

24 THE COURT: Well, she --

25 MS. KANOF: Mr. Adams is going to be next. I think

1 she opened the door to this by asking about the payment
2 schedule.

3 THE COURT: Well, you can ask about the payment
4 schedule, but you can't refer to exhibits that aren't in
5 evidence.

6 BY MS. KANOF:

7 Q. If you could look at Government's Exhibit Number 49 and say
8 do you recognize that payment schedule?

9 A. I do not.

10 Q. And Government's Exhibit Number 50, do you recognize that
11 payment schedule?

12 A. Actually, yeah.

13 MS. KANOF: May I approach them, Your Honor.

14 THE COURT: Yes, ma'am.

15 BY MS. KANOF:

16 Q. Okay. Okay. Ms. Franco asked you something about the
17 subcontract having left out all of this different information.
18 Before you testified there were annexes to the subcontract that
19 had all of the information in that. Are you changing your
20 testimony, the specs? She said in her question to you that the
21 subcontract was missing information regarding the
22 specifications.

23 A. Could you clarify that?

24 Q. I'm going to pull up the document for you.

25 With regard to the technical specifications, if you'll

1 look at Government's Exhibit 12A, which is the English version,
2 you previously testified about these two numbers?

3 A. Correct.

4 Q. Okay. And what did those numbers mean?

5 A. They are our technical specification for -- one, is for the
6 gas turbine generator set and the other is for the technical
7 specifications for the steam turbine and the steam turbine
8 generator.

9 Q. Okay. And right above the two bullet points, does it say
10 attached to this contract?

11 A. Yeah. Two gas turbines, one steam, respective attached to
12 this subcontract.

13 Q. Okay. So were the specifications missing from the
14 subcontract?

15 A. From our contract, no.

16 Q. So when you answered that question, what contract were your
17 specifications missing from or were they missing from any
18 contract?

19 A. Our subcontract at our technical specifications in whole as
20 we had submitted them, right, and agreed to subcontract on. As
21 I was saying, the same technical specifications presented to me
22 from C.F.E.'s contract, right, had deletions and omissions from
23 our technical specification, which made to the page numbering
24 being different.

25 Q. Was Mitsubishi at all a party to that prime contract?

1 A. To my knowledge, no.

2 Q. Okay. And with regard to whether or not this was a big
3 deal -- referring to this is a big deal, how many turbines were
4 there in this?

5 A. Two gas turbines and one steam.

6 Q. And they were preexisting, correct?

7 A. They were.

8 Q. And when were they manufactured?

9 A. 2003.

10 Q. So as contracts go, were these a big deal? Whatever that
11 means, I don't know what it means, but to you.

12 A. As I explained earlier, it wouldn't matter if the contract
13 was \$10 or 100 billion. We, in Mitsubishi, give our all on
14 everything and we go for our brand. So it's not how big the
15 price is or whatever it is. We follow standards and that's our
16 standard, right.

17 Q. Was anyone fired because this contract initially fell
18 through that you know of?

19 A. In Mitsubishi?

20 Q. In Mitsubishi.

21 A. You say it, right, I don't. Basically, not to my
22 knowledge.

23 Q. Okay. And let's see -- Ms. Franco also stated that you
24 received e-mails from C.F.E. that title could not transfer. Did
25 you receive any e-mails from C.F.E.?

1 A. I can't remember. With that subject matter I can't
2 remember getting an e-mail directly from them.

3 Q. Okay.

4 MS. KANOF: May I have a moment, Your Honor?

5 THE COURT: Yes, ma'am.

6 MS. KANOF: I'll pass the witness.

7 THE COURT: Ms. Franco?

8 KEVIN JOSEPH BEDDARD,

9 RE CROSS-EXAMINATION BY THE DEFENSE

10 BY MS. FRANCO:

11 Q. Mr. Beddard, the finishing up of the Agua Prieta project
12 that you testified to was just finished in August, last month?

13 A. It got C.O.D.'d.

14 Q. And that was a direct contract between Mitsubishi and
15 C.F.E., correct?

16 A. It was a settlement agreement contract by -- and it was a
17 Judge in Mexico City reviewed it and stamped is --

18 Q. Right.

19 A. -- so it's a judicial settlement agreement.

20 Q. But I'm asking you though is, is that it was something that
21 M.P.S.A. and C.F.E. -- through that mechanism, I understand what
22 you're saying about the settlement, but there wasn't a middleman
23 between C.F.E. and M.P.S.A. anymore, correct?

24 A. Well, the commission was there, as in the first one, so,
25 yes.

1 Q. Right. So that's how you get paid is through the
2 commission, correct?

3 A. Yeah, Banco Mex [sic].

4 Q. Okay. What I'm getting at is, is that F.G.G. was not
5 longer part of the contract, right?

6 A. Right.

7 Q. And they didn't get any of the profits, correct?

8 A. Not to my knowledge, no.

9 Q. You testified and Ms. Kanof brought it up again about the
10 teaming agreement, and I understand that you just barely looked
11 at it, but it appears that Mr. Adams had been involved in it,
12 correct?

13 A. As far as I know, yes.

14 Q. And you testified earlier that on the -- as far as there
15 was to be a pledge of equipment in lieu of a letter of credit,
16 that it had to be somebody at the vice president level or
17 higher, correct?

18 A. It would have to be an officer of the company.

19 Q. Right. And you said it would be a vice president or
20 higher, correct?

21 A. Normally, that would be the minimum level officer, vice
22 president.

23 Q. Correct. And Mr. Adams was the Vice President, correct?

24 MS. KANOF: Objection. Beyond the scope of redirect.

25 MS. FRANCO: Well, she brought up the teaming

1 agreement and whether or not --

2 THE COURT: You are going to want this witness to go
3 back home soon, right?

4 MS. KANOF: Yes, absolutely.

5 THE COURT: All right. So I'm going to let her direct
6 questions to him under rules of direct examination outside the
7 scope.

8 MS. KANOF: I have no objection to that, Your Honor,
9 because this witness needs to go back to England.

10 THE COURT: On all of those questions that you are
11 outside the scope, you're on direct.

12 MS. FRANCO: All right. Thank you.

13 BY MS. FRANCO:

14 Q. So I think I asked you, Mr. Adams was the Vice President at
15 that time, correct?

16 A. I think he was the Senior Vice President, but I'm not
17 certain.

18 Q. So you were higher than the minimum level?

19 A. (No response.)

20 MS. FRANCO: May I have just a moment, Your Honor?

21 THE COURT: Yes, ma'am.

22 MS. FRANCO: Pass the witness.

23 THE COURT: Ms. Kanof?

24 MS. KANOF: Nothing further for this witness.

25 Your Honor, may he be excused?

1 THE COURT: Ms. Franco, may --

2 MS. FRANCO: Yes, we have no objection, Your Honor.

3 THE COURT: All right.

4 Mr. Beddard, thank you so much for being with us. You
5 are free to go.

6 (Witness excused.)

7 MS. KANOF: The government calls John Adams.

8 THE COURT: John Adams.

9 Was Mr. Adams sworn?

10 MS. KANOF: He was not, Your Honor.

11 (Witness present and sworn by the Court.)

12 JOHN MICHAEL ADAMS,

13 DIRECT EXAMINATION BY THE GOVERNMENT

14 BY MS. KANOF:

15 Q. Good afternoon, Mr. Adams.

16 A. Good afternoon.

17 THE COURT: Could I ask you just to role into the
18 microphone a little bit, kind of lean into it. You can adjust
19 it to where you need it and we'll Be able to hear you better.

20 THE WITNESS: Thank you.

21 BY MS. KANOF:

22 Q. I haven't had an opportunity, but you have a computer
23 screen in front of you that will display an exhibit. Some of
24 the exhibits have been admitted into evidence, some of them have
25 not. If it has not been admitted, please don't testify from it

1 until the Court has admitted the exhibit.

2 State your name for the jury, please?

3 A. My name is John Michael Adams.

4 Q. And Mr. Adams, in what business are you?

5 A. I'm in the power business, either in the generation of
6 electricity or of making equipment to make electricity.

7 Q. What is your, briefly, your educational background?

8 A. I have a Bachelor's Degree in Mechanical Engineering from
9 Michigan Technological University and I've got some other side
10 training, management training, cubby training, et cetera,
11 associated with that.

12 Q. When did you graduate from Michigan Technological
13 University?

14 A. I graduated in 1980.

15 Q. And after you graduated, is there some kind of a
16 certification, like an accountant has a CPA, for an engineer?

17 A. Yes. I did become a professional engineer in the State of
18 Texas. I have the license, but I haven't kept it current.

19 Q. Often referred to as a P.E.?

20 A. P.E., yes.

21 Q. So after you got out of college, what type of engineering
22 did you engage in first?

23 A. Mechanical engineering and I went straight into power
24 plants. First thing we did is to work at a power plant right
25 out of college.

1 Q. What company?

2 A. Foster Wheeler.

3 Q. And what were your duties and responsibilities with Foster
4 Wheeler?

5 A. So I started off as a commissioning engineer, where I would
6 go to the power plants and effectively take it from being
7 manufactured to actually making it run and teaching the power
8 plant owners how to actually run the power plant.

9 Q. How long did you -- you got out of college in 1980. How
10 long did you work for Foster Wheeler?

11 A. Approximately, 22 years.

12 Q. What happened? Why did you leave them?

13 A. So Foster Wheeler, in approximately 22 years after I was
14 there, was in a downsizing period and I had an opportunity to go
15 to Mitsubishi Power Systems that was opening up a new business
16 in North America. They brought me in to help them form this new
17 company. And roughly it was a good opportunity for me to leave
18 and to try something different and go to a Japanese company, but
19 to build something, rather than to really kind of close a
20 company that was on a decline at the time.

21 Q. Where was Mitsubishi located at that time?

22 A. So Mitsubishi was opening their offices in Orlando,
23 Florida. Lake Mary is the actual suburb of Orlando. Now,
24 I'm -- at a time, again, I was one of the first ones there.

25 Q. Okay. And what were your duties -- did you have a title

1 when they hired you?

2 A. So when they hired me, they hired me to be the Vice
3 President of Sales to go ahead and set up a sales organization.
4 So I immediately went to setting up a sales group to go ahead
5 and offer Mitsubishi's power equipment into the United States.
6 So that was my job, was to set up the sales team and to set up
7 the commercial team to be able to offer the different goods that
8 Mitsubishi from Japan was making into the U.S.

9 Q. When you say offered and in the United States, did the
10 organization in Florida build Mitsubishi equipment?

11 A. So the Japanese were interesting. They actually built a
12 factory. It was kind of the reverse of what you see across the
13 United States. The Japanese invested hundreds of millions of
14 dollars and built the factory in North America to build
15 components for gas turbines.

16 Q. When was that?

17 A. It started when I got there, which was in the early 2002
18 period if you will. They built the factor and then we proceeded
19 to hire people. We went from 40 people when I joined to a
20 thousand people after when I was there.

21 Q. And your sales staff, how big was it?

22 A. So there were two sales staff. There was a no equipment
23 sales staff and I had roughly eight people on my time.

24 Q. How long did you work for Mitsubishi?

25 A. Roughly, nine years.

1 Q. When did you leave M.P.S.A.?

2 A. I left Mitsubishi in, roughly, 2010.

3 Q. What part of the year?

4 A. April-ish, right in the spring of it. And I left to go to
5 a company called Calpine, which is one of the largest owners of
6 power plants in North America.

7 Q. Why did you leave Mitsubishi?

8 A. I had an opportunity to actually get a promotion to become
9 the Senior Vice President at Calpine to take over all of the
10 operating fleet. There were 93 plants across the United States.
11 It was a much bigger job.

12 Q. Was it a much-more-money-job?

13 A. It was -- yes, it was considerably more money, yes.

14 Q. Did you leave on good terms from Mitsubishi?

15 A. Yes, I did. I gave them plenty of notice. And I think as
16 I left, I left the company in good order at the time.

17 Q. Okay. How long were you at Calpine?

18 A. I was at Calpine for almost six years.

19 Q. And when did you leave Calpine?

20 A. I left Calpine in August, one year ago.

21 Q. And who do you work for now?

22 A. I work for Blackstone, which Blackstone is the largest
23 private equity firm in the United States. And we own and we
24 operate power plants. We're buying more as we speak, so...

25 Q. Okay. And what do you do for Blackstone?

1 A. I'm chief Operating Officer for the company, for the
2 division that runs the power plants.

3 Q. Okay. And do you have any power plants in Texas?

4 A. We have four and a coal mine, as well.

5 Q. Okay. So when you got to Mitsubishi in 2001, you
6 started -- what were your duties and responsibilities as the
7 Vice President of Sales?

8 A. So my job was to go ahead and set up the sales team and
9 then to bring the Japanese products to the U.S. power market
10 in -- not U.S., but really the full North American power market,
11 including Canada as well as Mexico -- and to try to then get up
12 the organization such that Mitsubishi became well known and
13 respected and then to deliver the product that they made into
14 that market, so my job was to try to help to facilitate making
15 the sales. And then after that, I was promoted really to take
16 over the sales as well as the execution side of the businesses
17 where I would absolutely deliver the equipment and make it work,
18 too.

19 Q. Who was your boss?

20 A. My boss, uh, when I first got there, they were both
21 Japanese. There was two. The first boss was a Japanese fellow
22 that left after I was there about five or six years. And then
23 they brought in another Japanese president. So I was the
24 highest American that you could be on the new equipment side,
25 but we always had a Japanese boss.

1 Q. And who is Hector Ponce?

2 A. So Hector Ponce was an employee and he was actually the
3 Executive Vice President when I started at Mitsubishi. And then
4 Hector left and then I hired him back to be one of the sales
5 managers or sales people to help us with sales into Latin
6 America.

7 Q. Okay. So when you started and he was the Executive Vice
8 President --

9 A. Yes.

10 Q. -- was he in any kind of a supervisory position over you at
11 that time?

12 A. Yes. Actually, when I first joined, he was for the first,
13 say, six months or a year or so of my work or maybe even two
14 years of working there, he was then the E.V.P. position and I
15 was the S.V.P. underneath him, but mostly I was reporting to the
16 President.

17 Q. Okay. And Mr. Ponce left within several months after --
18 left Mitsubishi within several months after you arrived?

19 A. Yes, within some time after. It was probably more like a
20 year, but it was that order of magnitude.

21 Q. Okay. You said you hired him back. What do you mean?

22 A. Mr. Ponce went off and opened up a restaurant and ran that
23 for a couple of years, and after a while he decided that he
24 wanted to get out of the restaurant business and come back to
25 Mitsubishi, so I brought him back in to be the salesperson to

1 help facilitate sales in Latin America.

2 Q. As an employee or contract?

3 A. He was a contractor.

4 Q. Or a consultant.

5 A. Consultant. Yes, exactly.

6 Q. As the Vice President of sales, could you tell the grand
7 [sic] jury how normally you get involved in contracting for the
8 sale of generation equipment?

9 A. Sure. For generation equipment, we would have the sales
10 people around the country, North America, that would have the
11 direct contact with the customers. Most of these customers are
12 large utilities, so they would know the utilities or the owners
13 that would own the power plants.

14 Q. Do those salespeople live in those communities or do they
15 all live in Florida?

16 A. No. My philosophy was to have salespeople in their region,
17 so they could be directly connected to their customers. There
18 was a few support people in Florida that worked with me, but
19 predominantly we would have the salespeople out near their
20 customers all across North America.

21 Q. So, basically, their ears were to the ground?

22 A. Their ears to the ground, listening for when the next
23 project would be coming, when there was a need for a new power
24 to come into a different area and they would then communicate
25 back to us and get ready, and then the owner generally would

1 issue something called a request for quotation or request for
2 proposal.

3 Q. And that's usually called an R.F.P.?

4 A. Yes, R.F.P. or R.F.Q., depending on who the customer is.

5 Q. What is a request for proposal or a request for
6 qualifications? What is that?

7 A. Those are really a specification for going out to buy the
8 generation equipment that they're looking for. So it's I need
9 this gas turbine or I need a wind turbine or I need a solar cell
10 or I need one of these things and I want this many of them and I
11 want it on such and such a date, and I want it delivered to here
12 and I want it up and running, et cetera. So we'd get the
13 specifications associated with when a power plant was going to
14 be needed and what was needed.

15 Q. Do people sometimes mislabel that as a request for a bid?

16 A. Sometimes. And they tended it to be request for bid,
17 request for quotation, request for proposal, somewhat are
18 interchanged as saying -- meaning the same thing.

19 Q. And in a request for proposal, what information is issued
20 by the entity that is wanting somebody to supply goods?

21 A. For this kind of solicitation, if you will, they would tell
22 you how big their power plant was that they needed, how many
23 megawatts or kilowatts, how many different units they wanted,
24 how efficiently they wanted it, when they wanted it delivered,
25 when they wanted it up and running, and sometimes could go into

1 very big detail as far as they wanted green with certain kind of
2 wiring, they wanted it some ways other times not.

3 Q. What is gray market?

4 A. So gray market developed in and around the 2000 period when
5 there was a lot of gas turbine power plants being built. And
6 what happened was in 2000 and 2001, there were many, many
7 gas-fired power plants built that use new style of gas turbines
8 in a big combined cycle, very efficient, very clean power
9 plants. And in 2001 and 2000, 2001 and even in 2002, there was
10 a flurry of activity where many of these power plants were
11 built. Roughly 20 percent of the power plants in the United
12 States were replaced in that time period and then it actually
13 was so many that they actually overbuilt. So what happened was
14 a number of these gas turbines that were put on order were
15 effectively put in a warehouse, because they didn't need them;
16 they overbuilt them in that short window. So those gas turbines
17 that never got sold were put into inventory, if you will,
18 waiting for the next customer to look for them.

19 Q. Were you employed as Vice President of Sales at Mitsubishi
20 Power Systems America in 2009 and 20 -- until April of 2010?

21 A. Yes, I was.

22 Q. Okay. And did a possible project come to your attention
23 regarding the gray market during that time?

24 A. Yes. Yes, there was. There was a number of them, but this
25 one in particular, yes.

1 Q. Who is Rick Williamson?

2 A. Rick Williamson is a broker that works out of Ft. Worth
3 that we'd worked with before that would have -- his primary
4 function in life was to buy gray market or assist in buying gray
5 market turbines and then finding homes for them, finding
6 customers that would buy them. And I did work with Rick on a
7 couple of other occasions where he found us customers or found
8 us turbines in need that were gray market that we could use and
9 re-do and resell. Particularly, most of these gray markets were
10 never operated. They were like a brand new turbine that really
11 never ran, so they were brand new.

12 Q. Did Rick Williamson -- or how did you get involved with a
13 company called F.G.G. in El Paso?

14 A. Rick Williamson called one day in the middle of the summer
15 July-ish and say, hey, I got this opportunity. These people
16 from F.G.G. believe that they've got an opportunity to help work
17 with us to sell some turbines on this project in Mexico and
18 would you care about or listen to what the project is.

19 Q. Did you -- and did he tell you what kind of turbines they
20 were looking for?

21 A. Yes. He knew pretty much that we had these turbines,
22 because Rick and I had worked on these turbines in the past, and
23 he said, hey, this is a good opportunity for these 501 gas
24 turbines and a steam turbine and these highly efficient machines
25 were what they were looking for that application.

1 Q. So what happened next after he communicated to you that he
2 might have a buyer for your turbines?

3 A. He introduced us to this company F.G.G. that was
4 effectively qualified to submit a bid.

5 In the process that we had in this project, in
6 particular, you had to be pre-qualified to bid, and there were
7 only three pre-qualified bidding companies were allowed at that
8 time; general electric, Westinghouse and F.G.G., so they had the
9 opportunity for us to offer this equipment.

10 Q. You said Westinghouse?

11 A. I'm sorry. Yes, Westinghouse Electric, yes.

12 Q. Okay. Are you sure it was General Electric and
13 Westinghouse?

14 A. Siemens-Westinghouse. Sorry. Siemens Westinghouse,
15 they're in my mind the same company as Siemens bought
16 Westinghouse, yes.

17 Q. Westinghouse used to be very involved, but they sold the
18 electrical portion of their turbines to Siemens?

19 A. Not that long ago, but yes. Siemens bought Westinghouse,
20 so Siemens or Westinghouse was a competitor.

21 Q. Siemens, S-I-E-M-E-N-S?

22 A. Siemens out of Germany, yes, as the owner of that
23 technology.

24 Q. So it was General Electric, Siemens and F.G.G. of El Paso?

25 A. Correct.

1 Q. And those were the three companies that were permitted by
2 Mexico to respond to the R.F.P.?

3 A. Correct.

4 Q. So did you go to the meeting?

5 A. We did. We met with the F.G.G. people in Ft. Worth and
6 talked about how we could possibly team together to be able to
7 go after this opportunity.

8 Q. Who did you meet with?

9 A. Rick Williamson, Fernando Gireud was there. There was, I
10 believe, Mace was at that same meeting, myself and then another
11 of our salespeople that cover the Texas market was there as
12 well.

13 Q. Okay. You met in Ft. Worth. Now do you remember when this
14 meeting might have been approximately?

15 A. It was approximately the end of July, that era of time
16 period.

17 Q. Of what year, 2009?

18 A. Of 2009, yes. Uh-huh.

19 Q. And it was that a productive meeting?

20 A. Yes. It sounded like it was a good fit for us and it
21 really prompted us to look at coming together and making teaming
22 agreement where we would team exclusively with this F.G.G. to
23 offer the equipment that we had.

24 Q. How many other teaming agreements had you been involved in?

25 A. We've done a few in the past where we found applications.

1 Not that many, but a few in the past where we would team with
2 another customer or another company to help to offer our goods,
3 but not that many, but I would say one or two or three in my
4 nine or in my career at Mitsubishi.

5 Q. Do you have a -- the whole time that you are at Mitsubishi
6 Power Systems America, was there a legal department?

7 A. There was. We had our own full legal staff, roughly, five
8 or six people on the new equipment side and then a few people on
9 the services side as well.

10 Q. Was there an attorney by the name of Patrick Altamura?

11 A. Yes. Patrick was one of the attorneys that was working
12 closely with us.

13 Q. Was Marco Delgado at that meeting?

14 A. He was not.

15 Q. Do you know Marco Delgado?

16 A. I've met Marco sense then, but not at that time.

17 Q. Would you recognize him today?

18 A. I think so.

19 Q. Is he here in the courtroom?

20 A. I don't know. Let me get my glasses on.

21 I don't see him, actually. I thought I would
22 recognize him, but I don't see him here.

23 Q. Okay. Now what did you do after you left the meeting in
24 Ft. Worth?

25 A. We went ahead back to Orlando and drafted and worked on or

1 teaming agreement.

2 Q. Who is we?

3 A. My legal team and the salesperson with us. And we worked
4 with Rick Williamson and we developed kind of a methodology or
5 team methodology for us to go forward.

6 Q. Was -- do you know the equipment that Mr. Williamson was
7 recommending might fit the needs for this particular power
8 plant, was this the Agua Prieta II?

9 A. This was Agua Prieta II, yes.

10 Q. Did you -- do you know what the original purpose or what
11 the original destination was for these three turbines before it
12 was Agua Prieta?

13 A. Yes. Yeah. We had worked this project was with E.D.F.
14 originally and we had worked with E.D.F. for placing these
15 turbines into a -- and to, again, a foreign location for a
16 similar kind of project.

17 Q. So you drafted a teaming agreement in anticipation of the
18 potential of what?

19 A. In anticipation of them offering this for that specific
20 application, because it looked like it was a very nice fit.

21 Q. Well, did you think that a company like F.G.G. would win
22 this bid?

23 A. We didn't know that F.G.G. would win. We knew that our
24 equipment should be favorable for this opportunity, so we
25 thought if we put our best foot forward with F.G.G. that we

1 might have a shot at it. We thought we would have a pretty good
2 opportunity.

3 Q. I'm going to turn your attention to the screen now to
4 Government's Exhibit Number 5. And you're not on this exhibit.
5 I don't believe your name is on this exhibit, but do you
6 recognize the information as referring to the meeting that you
7 had or to another meeting?

8 A. No, this looks like the information for a couple of
9 productive long days and meetings, so it sounds like it was the
10 meeting that we had.

11 Q. Okay. So after your first meeting, did you do the
12 teaming -- did you draft the teaming agreement or did you have
13 other meetings?

14 A. I didn't have any other meetings that I recall, but I mean
15 other than discussions with my team, but I don't recall any
16 other meetings that I am went to, but I'm sure there were other
17 of my staff that would have.

18 Q. Okay. At what point did you bring Hector Ponce in?

19 A. Hector became involved in and around the time that we got
20 this opportunity, so it was roughly in that same time period.
21 It was after we had, I think, finished the teaming agreement,
22 but Hector was right in around that time period. Because he was
23 a South American guy, he was brought in to -- brought up to date
24 on the project so they could learn more about it.

25 Q. What did you need him for? You said you had 2000

1 employees. What did you need --

2 A. Well, we had 2000 employees in North America and
3 predominantly those were factory people to build the turbines.
4 Hector was our salesman for South America. So when we had an
5 opportunity to go build a project in South America, it was up to
6 him to understand what was the project, where were we going,
7 what were we building.

8 Q. Is he fluent in Spanish?

9 A. Very much so, that's why we chose him for South America.

10 Q. Was there anyone else in Mitsubishi that was fluent in
11 Spanish that had these qualifications?

12 A. Not to the degree that Hector did. Hector had good
13 Spanish, but he also had good people skills. He was on the
14 sales team with the specific charter. He had been brought in to
15 the sales team earlier, but he was brought on this project after
16 we found out about it, so it became then his target project to
17 go after.

18 Q. And did you enter into a formal consulting agreement with
19 him?

20 A. Hector had a consulting agreement, yes. I think he had a
21 previous to this as we were doing projects in Venezuela and
22 other areas, but it was when we brought Hector to this one after
23 we found out about it from F.G.G.

24 Q. On the screen is Government's Exhibit Number 7, which has
25 been admitted into evidence already. I don't know how familiar

1 you are or if you recall, but did you write this teaming
2 agreement yourself?

3 A. No. I would have my legal team write it. We would have
4 some basic concepts that we would talk through as a group and we
5 would come up with the teaming agreement based on, you know,
6 basic business principles and then the legal team would draft it
7 for us.

8 MS. KANOF: Isn't it -- is it not been admitted?

9 COURTROOM DEPUTY DUEÑAS: I'm sorry?

10 MS. KANOF: Okay.

11 THE COURT: It's conditionally admitted.

12 MS. KANOF: Now I would move admission, Your Honor.

13 BY MS. KANOF:

14 Q. Is Government's Exhibit Number 7 the teaming agreement that
15 you entered into with F.G.G.?

16 A. This looks like the agreement, yes, uh-huh.

17 MS. KANOF: Now I move admission, Your Honor.

18 MS. FRANCO: No, objection.

19 THE COURT: All right. G-7 is admitted for all
20 purposes.

21 BY MS. KANOF:

22 Q. So what was the purpose of the teaming agreement?

23 A. The teaming agreement was to aline us together with F.G.G.
24 such that we would be exclusive with each other. That means
25 that they would offer our equipment as it was and we would

1 effectively dictate to them what price we needed for it and what
2 the conditions of the sale would be and how we would be, you
3 know, safe, if you will, for making this offer together. So the
4 teaming agreement made sure there wasn't anything funny going
5 on, that we were trying to offer just our equipment and really
6 that we could effectively control the offer as it went in.

7 Q. What do you mean that there wasn't anything funny going on?

8 A. Having worked in foreign countries before, we are cognizant
9 of making sure that there's no -- nothing illegal going on, so
10 we were very careful to make sure that the teaming agreement
11 said that nothing like that could happen, Foreign Corrupt
12 Practices Acts, and then also that the offer that we would make
13 would be very specifically tailored to the equipment that was
14 already there.

15 The interesting thing for us was this equipment was
16 already made, so we had to make sure that it fit the -- you
17 know, it's like buying a blue car; if the customer wanted a red
18 car, you had -- you know, we were offering a blue car, that was
19 the color that the car was. And in fact that's what we had with
20 our gas turbines.

21 Q. Okay. And so with regard -- let's start with the first
22 page of the teaming agreement. The 8th of August, do you recall
23 that that was signed on the 8th of August?

24 A. Yes, it sounds the right period, yes.

25 Q. Where was it signed? Do you recall?

1 A. I don't recall. I think I signed it in Lake Mary, but I
2 don't recall exactly.

3 Q. Did you ever come to El Paso?

4 A. Never. First trip hear was today or yesterday.

5 Q. And this is the first time we've met face-to-face; is that
6 correct?

7 A. Yes, uh-huh.

8 Q. And with regard to the first paragraph, it appears:
9 Whereas F.G.G. has been qualified as a bidder, on -- by the 8th
10 of August of 2009, was this just in anticipation that they were
11 going to be qualified or they had already been qualified as a
12 bidder?

13 A. We were led to believe they were going to be a bidder, they
14 were going to be qualified as a bidder. They told us they
15 would. We didn't have any means of checking it, but we heard it
16 was going to be one of the three bidders.

17 Q. But they had not submitted a bid yet?

18 A. No.

19 Q. The purpose of the teaming agreement was in the first
20 paragraph; the intent of the aforementioned R.F.P. is to award a
21 contract. So the first thing that you did in the teaming
22 agreement was what, define Mitsubishi's equipment; is that
23 correct?

24 A. We defined Mitsubishi's equipment and we also defined that
25 we wanted the service agreement to go with it.

1 So, the way these work, these are very large gas
2 turbines which are like a jet engine, and you need to maintain
3 those as well. So our intent and what we understood the intent
4 of the request for proposal, the R.F.P., was to offer the
5 equipment, but then also to offer the service agreement that
6 went with it for multiple years afterwards.

7 Q. Okay. So lets -- was there a dual purpose in this
8 agreement? Because I see and "I" and then I see and "II"?

9 A. Exactly, there was both. It was a dual purpose which was
10 to define that we were going to team together to offer the
11 equipment and the service as two separate contracts for this
12 project.

13 Q. So with regard to the contract to provide the equipment,
14 was you were going to team together. And who was the seller and
15 who was the buyer?

16 A. So our understanding was that for the equipment that F.G.G.
17 would sell to C.F.E. and we would sell our equipment from
18 Mitsubishi Power Systems to F.G.G. So it was two steps, if you
19 will. And that's somewhat different than what the L.T.S.A.
20 intent was.

21 Q. The long term service agreement, are you familiar with
22 basically all of these contracts relating to Agua Prieta before
23 you left in April of 2010?

24 A. Basically, yes. Uh-huh.

25 Q. And the long term service agreement, is that referred to in

1 the contracts in capital letters, L.T.S.A.?

2 A. It is, yes.

3 Q. So save somebody some typing?

4 A. Yes, correct.

5 Q. So the second purpose of the teaming agreement is the "II";
6 is that correct?

7 A. Correct.

8 Q. And what is that purpose?

9 A. The second purpose was the long term service agreement for
10 maintaining of these gas turbines, maintaining of these jet
11 engines over a period of time, and that was the purpose.

12 Q. Okay. What -- maintaining them. So would that be -- at
13 what point would a long term service agreement start?

14 A. Typically a long term service agreement starts when the
15 warranty ends on the new equipment. The way a gas turbine
16 works, generally has a one-year warranty to it, and one year
17 depending on how you run it is 8600 hours-ish, if you will.

18 These gas turbines every 8,000 hours of operation if
19 you were to run it continuously, you would go in and replace
20 certain components every 8,000 hours. So that was what the
21 service agreement was, was to bring the replacement parts and
22 the people to go in and do this maintenance that would occur
23 8,000, 16,000, 24,000 hours.

24 Q. These were gray market turbines though, right?

25 A. Yes.

1 Q. But they had never run?

2 A. They had never run, and since we were part of the -- of
3 Mitsubishi, we were able to give a warrant with that.

4 Q. That was my question. Did they still come that one-year
5 warranty?

6 A. Yes. We provided it with a one-year warranty.

7 Q. And so when were you going to make a determination of
8 whether or not Mitsubishi would also contract for the long term
9 service agreement?

10 A. It was always our intent from the very beginning to offer
11 both. And that's what the teaming agreement basically said was
12 that we really wanted to offer the gas turbines, but then to
13 offer the service agreement with it, because the service
14 agreement is a long term commitment for making sure that the
15 equipment runs right, but it was a profit setter for the
16 organization as well.

17 Q. A long term service agreement is pretty lucrative, right?

18 A. They can be, yes, uh-huh.

19 Q. Now that long term service agreement, would F.G.G. have
20 anything to do with it?

21 A. We didn't intend for them to do, because our -- you know,
22 the idea was we wanted to have F.G.G. put in the offer, and we
23 specifically drafted the teaming agreement such that we would
24 effectively contract directly with C.F.E., because this
25 agreement would go for as many as 12 years or more and we didn't

1 want to have to go through F.G.G. for the next 12 years as we
2 continued to maintain the equipment.

3 Q. Were you aware whether or not F.G.G. had any expertise with
4 regard to servicing turbines?

5 A. We believed they did not and that was one of the reasons
6 why we certainly didn't need to go through them with anything.

7 Q. Okay. Now, there are many terms with regard to the teaming
8 agreement. And I think you previously testified your legal
9 department was integral in developing this; is that correct?

10 A. Correct.

11 Q. What, to you, looking at, for example, under general on
12 page two, we do see the L.T.S.A. and is -- that's what we're
13 talking about, correct?

14 A. Correct.

15 Q. Okay. So the relationship of the parties, does that
16 define -- what does that define, the relationship of the
17 parties?

18 A. So I guess, you know, the idea, and again this was a few
19 years ago, but the relationship was that F.G.G. would be the
20 deliverer of the proposals and the prime contract for the
21 equipment sale and we would be, if you will, the seller to them
22 and they would effectively resell to C.F.E.

23 So that's what that first section would define and
24 then the second section, I believe, was intended to define how
25 the L.T.S.A. would go directly to the C.F.E.

1 Q. So the, A. requires that F.G.G. be the prime contractor
2 with C.F.E., correct?

3 A. Yes.

4 Q. But the B. regards the long term service agreement; is that
5 correct?

6 A. Correct. And they were the bidding entity that introduced
7 us so that we could have a direct negotiation with C.F.E.

8 Q. Okay. And so then you start defining the terms required
9 for the teaming agreement for the equipment; is that correct?

10 A. Correct, uh-huh.

11 Q. And that is separate and apart than the terms from the
12 teaming equipment for the bidding of the long term service
13 agreement, correct?

14 A. Correct.

15 Q. With regard to the prime contract, were there anything --
16 any terms that were particularly significant to be included by
17 Mitsubishi? Was there anything that legal was particularly or
18 you were particularly concerned about?

19 A. For a project like this, and again I'm remembering kind of
20 without looking into too deep, into too much detail, there was a
21 couple of items that we were particularly careful on; one was to
22 make sure that we get paid, because again getting shipping
23 equipment and not having the money in advance would put us into
24 a position where we could be without the equipment and without
25 getting paid, so we had to have surety of payment.

1 The other was that the equipment being pre-made
2 technically it had to be as it was. We couldn't remanufacture
3 something that was already made, so we had to make sure that the
4 specifications were close enough and that we could take
5 exception to what things were not within the specification.

6 Q. Looking at page four, and I've scrolled to page four,
7 number two, mutual obligation. And in discussing -- by this
8 time had you met Mr. Delgado?

9 A. I do not believe so at this time, yet.

10 Q. So this is -- basically who related to you that Mr. Delgado
11 was the outside legal counsel for F.G.G.?

12 A. I think this came back from F.G.G. that they were going to
13 use Marco Delgado to help to assemble.

14 Q. According to the agreement, his responsibility was to
15 assemble all of the documentation required for the R.F.P.; is
16 that correct?

17 A. Correct, uh-huh.

18 Q. And ensure all of the certifications and formalities were
19 incorporated into the proposal; is that right?

20 A. Correct, uh-huh.

21 Q. And then the next sentence, is that of particular
22 importance to Mitsubishi; are consistent and in strict
23 conformity with the Mitsubishi proposal?

24 A. Yeah, very much so. There was a couple of items on there,
25 again being that the equipment was already made, it had to be

1 exactly what we were offering because we couldn't remake it.
2 The other areas that we were worried about was our price is our
3 price and our terms and conditions were our terms and
4 conditions. So we needed to make sure that what we offered in
5 our proposal the conditions of sale, the price, the payment
6 terms and then the technical specs and technical aspects were
7 matching what we offered because that's what we had. We
8 couldn't sell something that we didn't have.

9 Q. What is the Mitsubishi proposal? Who were you proposing
10 what to?

11 A. We proposed our gas turbines and steam turbine -- gas
12 turbines and steam turbine on the equipment side to F.G.G. And
13 again, we were selling to them and then they were selling as the
14 prime to C.F.E., so we needed to make sure that it passed
15 through in accordance that was exactly the same.

16 Q. Did you make that proposal in writing?

17 A. Yes.

18 Q. Is that what the subcontract is?

19 A. The proposal is different than the subcontract. A proposal
20 is a proposal.

21 Q. And what was the substance of the proposal?

22 A. Proposal defined Mitsubishi's equipment. It defined what
23 price we wanted for it. It defined the terms of payment, when
24 we wanted to get paid. It defined when it would ship. It
25 defined how many megawatts and how much -- what the efficiency

1 was of the equipment and when it would deliver, et cetera. It
2 gave really the, you know, all of the terms associated with
3 bringing the power plant equipment to the power station.

4 Q. And with regard to this language, the word "strict," was
5 that an important word?

6 A. Very important. We needed it to be exactly the way it was,
7 because we couldn't -- we were not going to take a contract that
8 didn't conform to the equipment that we had or the price that we
9 had or the terms and conditions that we needed to make sure that
10 we were safe in doing business in a foreign country.

11 Q. All right. And then in the next sentence -- I'm going to
12 try to get rid of this yellow so that I can use other yellow.

13 In the next sentence, F.G.G. will also provide any
14 letters -- sorry -- of credit required by the R.F.P. for the
15 supply and equipment service. What does that mean?

16 A. So, in doing business in -- anywhere, sometimes you have to
17 put some type of credit, some type of bond. This was a specific
18 letter of credit and we had no intentions with the gas turbine
19 with the equipment supply contract to offer any sureties at all.
20 We were not going to offer letter of credit or a bank guarantee
21 or anything. We were going to offer the equipment and we
22 believed that it was F.G.G.'s obligation as part of the teaming
23 agreement to provide any letters of credit or any bank
24 guarantees or anything associated with the equipment contract
25 for -- you know, for their needs. We were not providing any.

1 Q. Generally, in your industry, if you are the direct supplier
2 to the end user without an intermediary company, who is
3 responsible for the letters of credit?

4 A. Generally, the equipment supplier would do or could do some
5 letter of credit. Usually that was -- that was not usual for
6 that to happen for the equipment supplier to bring a letter of
7 credit. And that tended to be the general way.

8 Q. Who was the equipment supplier to C.F.E., you or F.G.G.?

9 A. F.G.G. was.

10 Q. With regard to the rest of this sentence: And cause the
11 financing?

12 A. Again, similarly, if there was any financing required to
13 happen where -- some projects would require the seller of the
14 equipment to help to go to the bank to solicit financing for the
15 owner, and if there was any that was needed, we intended for
16 F.G.G. to do that. We had no provisions in our contract to
17 provide letters of credit or assistance for the financing of
18 this equipment.

19 Q. So say El Paso Electric Company needed to borrow money to
20 pay for a new power plant, is that what you are talking about?

21 A. Yeah, in those kind of cases that would be what would
22 happen. If they were to borrow it, sometimes they would want
23 the supplier of the equipment to help them go to the bank and
24 get the financing.

25 Q. So you were just covering your bases?

1 A. We didn't. We didn't have any -- we had no intentions of
2 supplying either of those. We were covering our bases for both,
3 yes.

4 Q. And -- or cause C.F.E. to waive such requirements as
5 appropriate?

6 A. Exactly. If they didn't need it, then that's fine.

7 Q. Does that clause modify both the letters of credit for the
8 equipment and service and any financing required?

9 A. That was our intent, yes.

10 Q. Do you know if either in the prime contract in this case
11 between F.G.G. and C.F.E., if either the letters of credit or
12 the financing requirement were waived?

13 A. I do not believe they were. I don't know for sure --

14 Q. Okay.

15 A. -- because we weren't in that contract.

16 Q. Now new topic, because --

17 THE COURT: Before you get to that Ms. Kanof, let's
18 take a ten-minute recess. That'll be our last for today. We'll
19 be in recess till 5 o'clock. We'll resume our proceedings at
20 5 o'clock.

21 COURTROOM SECURITY OFFICER HEIDTMAN: All rise.

22 (Break at 4:53 p.m. to 5:03 p.m.)

23 THE COURT: Let the record reflect that all members of
24 the jury are present, the United State's through its assistant
25 United States attorneys is present, the defendant and his

1 counsel is present.

2 The witness, Mr. Adams, is on the witness stand.

3 Ms. Kanof?

4 MS. KANOF: Thank you, Your Honor.

5 BY MS. KANOF:

6 Q. Mr. Adams, I'm still on that paragraph. With regard to
7 your representation between or your representation of Mitsubishi
8 by F.G.G. with C.F.E., does Mitsubishi try to cover themselves
9 by saying they will have the active support. What is this part
10 about?

11 A. So the idea was on this section Mitsubishi will actively
12 support F.G.G. by furnishing our Mitsubishi's proposal. They
13 would help with the strategy in how to win. They would be the
14 ones putting in the proposal. And whatever was needed from a
15 technical standpoint, F.G.G. was really the ones delivering the
16 proposal and acting on the behalf of delivering it.

17 Q. Okay. Now, bullet point number one, why is this important?

18 A. We wanted to be -- you know, if there was any change in the
19 direction, if the project was changing we wanted to know
20 immediately if our equipment would work or not work. We wanted
21 to be kept aware of what might happen, you know, if there was
22 any change that could impact us during this project.

23 Q. Okay. With regard to the bullet point that I'm
24 highlighting, was communications important?

25 A. Very much. We wanted to be very careful and make sure that

1 they were delivering the proposal as we offered it, again to
2 make sure that it matched with the commercial terms and
3 technical terms that we'd given. Yes, communication was very
4 important.

5 Q. Did you have an opportunity to do what it says in this
6 bullet part to review in comment on F.G.G.'s proposal to C.F.E.?

7 A. We did not.

8 Q. Can you explain why you went through with it if you didn't
9 have an opportunity to do that?

10 A. We were led to believe that they had offered our proposal
11 as it was, but we never really saw it till it went in, so we
12 thought it's still going to be -- it's going to be our proposal.
13 We just never got it as we had requested that we would get it,
14 we never got it and before it was actually submitted. We
15 thought it would still be okay. We thought we were still being
16 offered, our offer was still being offered as it was.

17 Q. Was it?

18 A. Turned out it was not.

19 Q. How do you know that?

20 A. We later found out that they had changed some of the
21 commercial terms, in particular, the payment terms were a little
22 bit different from what we found.

23 Q. How did you find that out?

24 A. They came back to us after the award and said here's -- you
25 know, here's what our payment terms are and here's how much

1 money you are going to get. Both the price of the payment terms
2 were somewhat different than what our proposal was when we had
3 originally offered.

4 Q. Were they significantly different?

5 A. Yes. Yes, they were.

6 Q. Okay. Give us some examples of how they were different?

7 A. Well, we originally offered the equipment for \$121 million
8 and the payment terms, I believe the first payment was 20
9 million. When it came back to us, you know, considerably later
10 in time, they had taken away of a number of the scope items like
11 the delivery and they had also changed some of the payment terms
12 to a lower payment term that were not sufficient for us.

13 Q. Okay. One of the last bullet points here has to do with
14 Mr. Delgado, does it not?

15 A. Yes.

16 Q. And what is that?

17 A. That it -- that F.G.G. was fully responsible for Marco,
18 that he was under their watch and under their payment, that
19 Mitsubishi in no way had intended to hire Marco or pay for
20 Marco.

21 Q. And does it give certain responsibilities that he has with
22 regard to the teaming agreement, Mr. Delgado --

23 A. Yes.

24 Q. -- cause its legal counsel too?

25 A. Yes, it does. He was to do a number of things associated

1 with it. And again I don't have the document other than you
2 just scroll down, but, yes, he was to do a number of things; to
3 do the translation, you know, as it says in here, to be
4 responsible to the delivery of the proposal.

5 Q. Without -- we don't need to go through all of them, but
6 look at E. or we can do it later -- the document's in
7 evidence -- but look at E. --

8 A. Uh-huh.

9 Q. -- and tell me what that's about.

10 A. So Mr. Delgado was responsible in developing the
11 relationship with C.F.E., so he was the one that was having some
12 of the direct discussions with C.F.E. and support the team, you
13 know, through the whole project through the equipment contract
14 so he was to have that relationship.

15 Q. Okay. And did you want to commune- -- did Mitsubishi need
16 to communicate with C.F.E.?

17 A. Yes. We would need to communicate with them as well as the
18 project.

19 Q. And were they supposed to assist you in developing a
20 relationship with C.F.E. so you could do that?

21 A. Yes, that was the purpose. He was supposed to help us to
22 develop the relationship, thus we would execute the project.

23 Q. Did he?

24 A. Not really, no.

25 Q. At the very -- I think I might need to go to the Spanish

1 document. Okay.

2 In this subcontract on page seven, does it have who
3 the contact point for F.G.G. was for all purposes in the teaming
4 agreement?

5 A. Yes. Can you scroll down a little bit? But it was
6 Fernando who was the -- for the purposes of the teaming
7 agreement, we were working with Fernando.

8 Q. Okay. And it wasn't Mr. Delgado?

9 A. No, it was not.

10 Q. And for Mitsubishi, the Senior Vice President of Projects?

11 A. That would be me.

12 Q. That would be you?

13 A. Uh-huh.

14 Q. Was this supposed to expire, this teaming agreement, at any
15 time?

16 A. When we lost the project, the teaming agreement would have
17 expired. Yes, there was expirations to it.

18 Q. Okay. Let me go down to signatures. On the right-hand
19 side, is that your signature?

20 A. Yes, it is.

21 Q. And I think you previously said that you signed this in
22 Florida?

23 A. I believe so, yes.

24 Q. And was Mr. Gireud there as well?

25 A. I do not believe he was. I don't think we signed it

1 directly with each other. I think we, you know, had
2 electronically transmitted back and forth.

3 Q. Oh, so you electronically sent your documents with your
4 signature on it?

5 A. Yes. What we would -- we would fax and scan and fax some
6 documents, yes, uh-huh.

7 Q. And was -- so was there anybody from F.G.G. in Orlando when
8 you signed this document?

9 A. I don't recall anybody there, no.

10 Q. Let me try to get the Mexican version up. Oh, that's the
11 subcontract. We're doing fine.

12 Okay. So once the teaming agreement was signed, what
13 happened next?

14 A. Then we waited to go ahead and submit the proposal, our
15 proposal for the equipment to F.G.G. such that they could go
16 ahead and submit their proposal to C.F.E.

17 Q. Okay. With regard to -- once you had signed the teaming
18 agreement, what were your duties and responsibilities with
19 regard to this particular project?

20 A. Our duties we had, according to the teaming agreement, the
21 intent and obligation to supply the equipment to F.G.G. and then
22 to provide the bid for the L.T.S.A. to F.G.G. for their help to
23 get us to work directly with them for the L.T.S.A.

24 Q. At some point in time, did F.G.G. win the R.F.P.?

25 A. Yes.

1 Q. Do you remember when that was?

2 A. I believe it was in the November time period.

3 Q. Maybe, approximately, November 19th of 2009?

4 A. Roughly, yes.

5 Q. Did they communicate that to you?

6 A. Yes.

7 Q. And upon communication to the fact that you now had a
8 teaming agreement and with a company that had now won a bid,
9 what did you do next?

10 A. We wanted to get more details and to figure out what it is
11 that we want, and we requested F.G.G. to help us to understand
12 more and to go into contract with them.

13 Q. And I'm going to show you the exhibit number --
14 Government's Exhibit 11 that you're viewing.

15 A. Yes.

16 Q. And is it an e-mail from you to Mr. Gireud, copied to
17 Hector Ponce, Patrick Altamura and another individual?

18 A. Yes, it was. We were -- yes, it was.

19 Q. And does it have a letter attached to it? Just by looking
20 at the word attachment does it appear to?

21 A. It should, yes, uh-huh.

22 Q. Okay.

23 MS. KANOF: We'd move Government's Exhibit Number 11
24 into evidence.

25 MS. FRANCO: No, objection.

1 THE COURT: GX-11 is admitted.

2 BY MS. KANOF:

3 Q. So what's this e-mail about?

4 A. So as we were notified that we had won, we were concerned
5 about finishing up the deal, which was, you know, going ahead
6 and making our contract, you know, with F.G.G. for the equipment
7 such -- and making sure that it matched with what it was being
8 offered to C.F.E.

9 Q. Did you write a letter to Mr. Gireud?

10 A. Yes.

11 Q. Is this the letter that's being displayed that was attached
12 to the e-mail, Government's Exhibit 11?

13 A. Yes.

14 Q. Okay. So can you tell the jury about this letter?

15 A. So this letter was, you know, thank you for, you know,
16 telling us that we won, but we were very worried about the lack
17 of communication and we wanted to get all of the documents and
18 try to get everything together such that we could collectively
19 do what we said we would to do.

20 Q. You just won the bid in November and you are already
21 concerned about lack of communication?

22 A. Yes, uh-huh.

23 Q. Tell the jury about that.

24 A. Well, we had hoped that we would have gotten a copy of the
25 proposal that they submitted to C.F.E., which was what requested

1 in the team agreement, and we never did. We never got --

2 Q. Did you ask for it?

3 A. We did ask for it.

4 Q. Who asked for it?

5 A. Hector Ponce asked for it a number of times as well as
6 myself.

7 Q. Okay.

8 A. Uh-huh.

9 Q. And who did you ask?

10 A. Fernando, who would be, you know, the contact that we would
11 go to.

12 Q. And what would he reply?

13 A. He would always be that it's coming, it's coming, but it
14 never can come.

15 Q. Okay. What else -- so this is less than ten days after the
16 award of the contract and you are already concerned about
17 communications. And so are you writing this letter?

18 A. Yes, uh-huh.

19 Q. And you say, pattern of poor communications. I think
20 that's where we are.

21 A. Correct, uh-huh.

22 Q. And what is this reluctance thing?

23 A. Just we would ask for and they would not give us the
24 information, you know, that we'd asked for, which was their
25 proposal to C.F.E.

1 Q. And you explained that in that paragraph, correct?

2 A. Correct, uh-huh.

3 Q. And the next paragraph?

4 A. Again, the same thing, that we'd had under our teaming
5 agreement a number of requests and, you know, we wanted to get,
6 you know, copies to make sure that they were complying with what
7 the teaming agreement said. We wanted to make sure they were
8 giving us what we were entitled to under that agreement.

9 Q. Do you consider this strong language?

10 A. Yes, for me, this is pretty strong language. You know, in
11 order for us to have a chance to be working together, yes.

12 Q. Why were you concerned so quickly?

13 A. Because we were told they wanted something. And it was a
14 pretty good size contract, \$121 million, and we didn't know what
15 we had won, so it was concerning for us that we might be having
16 something that we couldn't deliver and we didn't want to have
17 our representation at risk.

18 Q. Was there anything about the fact that they were not
19 General Electric or Siemens that concerned you?

20 A. They were a smaller company, so we were very much concerned
21 that they -- we were concerned that they didn't have the ability
22 to do this without us, that you know they didn't necessarily
23 have the depth to be able to work through this. We were
24 concerned with their size, yes.

25 Q. Do you know anything about the qualifications of

1 Mr. Gireud?

2 A. Very little. We knew a little bit of his background. We
3 had met shortly, but we also knew he was an expert in the power
4 industry.

5 Q. Do you know anything about the qualifications of
6 Mr. Delgado?

7 A. Not really, at that time. We knew he was a lawyer, but we
8 didn't know much beyond that.

9 Q. Do you know anything about the qualifications of
10 Mr. Miller?

11 A. No, not so much. Again, we met him and we had no idea
12 whether -- of the qualifications, so...

13 Q. Why did you think this was a sound idea if you knew nothing
14 about the company that was the intermediary between you and the
15 Comisión?

16 A. Because we were selling directly to them for resale. We
17 thought they would just pass through exactly what we offered.
18 So we didn't think there was much risk for us, provided they
19 followed the teaming agreement that, you know, as long as here's
20 what we offer, here's the terms and conditions, here's the
21 price, here's what it is that we offer, it was a pure resale.
22 We did not anticipate any big issues there, because the
23 equipment was what it was. It was just a passthrough and we
24 didn't expect that they would cause any issues. We thought they
25 would just, you know, pass it through.

1 Q. You then in this letter recite letters in verse, some of
2 the clauses from the teaming agreement?

3 A. Yes.

4 Q. Looking at the second paragraph, do you talk about
5 submitting the proposal agreement unchanged?

6 A. Yes.

7 Q. Okay. And you already had a concern about that?

8 A. Yes. Uh-huh.

9 Q. With regard to -- the next paragraph as well talks about
10 not making any changes in price, right?

11 A. Correct.

12 Q. What about payment terms?

13 A. Same thing; price, payment terms, scope of work, terms and
14 conditions.

15 Q. What about Mitsubishi being afforded an opportunity to
16 review and comment on the proposal that they already submitted
17 their proposal and won and now you are reminding them that you
18 should have because it's a little too late, isn't it?

19 A. Well, we reminded them we didn't know yet that it was too
20 late and we didn't know what they had offered, so we had hoped
21 that they had offered what we had, but we didn't -- we were
22 hoping that they'd offer it exactly as we had given it. We
23 wanted to look at that and see.

24 Q. Okay. With regard -- like I said, it's pretty strong
25 language, but was that intentional on your part?

1 A. Yes, very much so.

2 Q. I've scrolled down to a paragraph that starts with: It is
3 especially important. What was especially important?

4 A. That they complied with the terms under the teaming
5 agreement, which meant that we would get direct payment which
6 was very important. So again, the things that were important to
7 Mitsubishi as a company were that we didn't have any liability,
8 that we got paid and that the equipment was what we offered, so
9 we were very careful to make sure that they -- that the
10 requirements for the direct payment, the requirements for
11 exclusion of risk for us, waivers and separation, et cetera,
12 were all per our offer. We wanted to make sure that they again
13 passed through the terms and conditions that we were not going
14 to get stuck with any liability.

15 Q. Perhaps you can explain who the Fideicomiso is?

16 A. The Fideicomiso, we believe to being the agency for C.F.E.
17 that would process the payments and the contracts.

18 Q. Okay. And direct payment, do you mean the right?

19 A. Yeah, we were -- so, again, being that F.G.G. was a small
20 company, we wanted to be sure that we were going to get paid.
21 That was one of the specific intents of what we were trying to
22 do. So what we had asked for was and what we wanted and what we
23 believed was fair was a direct payment from C.F.E., because
24 F.G.G. didn't have the money so we didn't want to have to pass
25 money through them. We wanted a direct payment.

1 Q. And what is the formal term for that in most of these
2 communications, the assignment of --

3 A. The assignment of payment rights is what we would want
4 from -- you know, since they were getting paid from F.G.G., we
5 wanted them -- from C.F.E. to F.G.G., we wanted them to assign
6 their rights of payment direct to us, since we were the ones
7 making the equipment, and we could therefore rely that the money
8 would be coming to us.

9 Q. And was it assigned directly to you or was the agreement
10 that they would provide a letter to C.F.E. requesting that the
11 assignment go to you?

12 A. We requested directive full assignment. We wanted -- and
13 specifically in our agreement, we wanted the rights for the full
14 assignment, not just them to ask, but for them to get us the
15 assignment of the payment to us.

16 Q. Okay. The next paragraph starting with: One example that
17 illustrates, what's that about?

18 A. So we had heard or thought that in some of the discussions
19 that we were having that M.P.S.A. was to -- you know, somebody
20 had suggested that we were to prepare a letter of credit for
21 \$20 million. And we very specifically in our equipment contract
22 didn't have any letters of credit. We very specifically made
23 sure that we were not going to offer any letters of credit. We
24 were offering the equipment.

25 So again the two pieces were the letter that we had no

1 intentions of, would put no money in and we -- and you have
2 to -- you know, letters of credit cost money. It's like putting
3 money in the bank and you have to pay the interest payment on
4 that as well. We didn't have a proviso to do that. That's part
5 of what F.G.G. was offering in their offer to us, so we were
6 very concerned that they were trying to confuse the issue. So
7 for the equipment -- for the equipment bid, there was no letters
8 of credit offered.

9 For the L.T.S.A., we were looking at a direct contract
10 with C.F.E., we would -- therefore, we would do so there. There
11 was a difference, a distinct difference between the two.

12 Q. Mr. Adams, did you ever go to Mexico prior to the contract
13 being signed between F.G.G. and C.F.E.?

14 A. Yes. I went one time, uh-huh.

15 Q. You went one time. When was that?

16 A. I went one time -- I went in December of -- well, the one
17 time before, I can't remember exactly, it was September-ish and
18 then I went one more time in December.

19 Q. When you traveled, did you travel at the expense of
20 Mitsubishi?

21 A. Yes.

22 Q. Who set up your travel?

23 A. We had an in-house travel agent called I.A.C.E. Travel.
24 They did all of my travel for me.

25 Q. Did somebody keep your calendar of travel?

1 A. Yes. I.A.C.E. people would give me travel documents. And
2 then I had an assistant that would help we with a lot of that,
3 so both.

4 Q. When you traveled to Mexico, did you -- just working at
5 Mitsubishi, did they provide you a cell phone?

6 A. Yes. I had a company-provided cell phone.

7 Q. And when did you use that company-provided cell phone?

8 A. Wherever I was on business, whether it was Mexico or
9 whether it was any country, I would use the cell phone
10 forever -- for wherever I was, I would use it as a business
11 phone.

12 Q. Did you ever use a personal cell phone for business?

13 A. Never.

14 Q. Did you ever -- did your business phone ever or your
15 Mitsubishi phone ever conk out so you had to use your personal
16 phone?

17 A. I didn't have a personal phone.

18 Q. Neither do I.

19 So who paid the bill?

20 A. Mitsubishi direct paid all of the cell phone bills.

21 Q. It's going to take me a second to find this.

22 I have Government's Exhibit Number 27. What does it
23 look like to you?

24 A. Looks like Mitsubishi Power System's cell -- it looks like
25 a cell phone charge account, if you will.

1 Q. Did you ever review the charges that you made on your cell
2 phone?

3 A. No, I never did actually.

4 Q. Okay. And I'm looking for your -- for a cell phone number
5 on here.

6 Page three of this document, and it's Government's
7 Exhibit Number 27, there's a phone number at the top. Do you
8 recognize that phone number?

9 A. Yes. That was my cell phone number.

10 Q. And could you tell us what that number was?

11 A. That was my business cell phone with Mitsubishi.

12 Q. And what's the number?

13 A. 407-221-9508.

14 Q. Okay. And they didn't let you review them to see if they
15 were correct or anything like that, but the customer for that
16 phone was actually Mitsubishi, correct?

17 A. Correct.

18 Q. When you -- so who kept your calendar now?

19 A. Uh, I had an assistant, Sharon Prader. She was my
20 assistant that kept my calendar and the then the travel agent
21 would manage the travel, too.

22 Q. When you would go -- so we started to talk about you going
23 to Mexico for this contract. Where in Mexico did you go?

24 A. Mexico City.

25 Q. How did you get there?

1 A. I flew.

2 Q. Okay. And how did you get from Mexico City -- well when
3 you left -- how many times did you go to Mexico before January
4 1st or before you left between the time this contract began and
5 the time you left Mitsubishi in April of 2010? How many times
6 did you go to Mexico?

7 A. Before the contract actually or before the proposal?
8 Sorry.

9 Q. Okay. Let's start --

10 A. Before the contract? I didn't go any -- I went one time in
11 December and then one time before that.

12 Q. Okay. I'm sorry one time when?

13 A. In December and one time before that.

14 Q. Did you ever go any time after December?

15 A. No.

16 Q. Did you ever go in the year 2010?

17 A. No, not at all.

18 Q. Let's talk about the two times that you went in 2009.

19 What airport did you fly out of?

20 A. The first trip I believe I flew out of Orlando. The second
21 trip I flew out of Las Vegas.

22 Q. And the first trip when you flew out of Orlando, when you
23 returned to the United States from Mexico, what airport did you
24 fly into?

25 A. I believe it was Miami, but I think it was, but I'm not

1 really clear on it. It was a few years ago.

2 Q. And when you came into the United States for the trip that
3 you had departed from Las Vegas, what airport did you fly into?

4 A. I believe Miami, but I'm not 100 percent --

5 Q. Miami International Airport, correct?

6 A. Correct, uh-huh.

7 Q. Do you -- you fly -- you've flown for years
8 internationally, correct?

9 A. Correct, uh-huh.

10 Q. I understand at some point did you have to fill out any
11 kind of a form or anything coming into the United States as an
12 American citizen?

13 A. Usually, you do customs. I always do a customs declaration
14 when I come back into the United States.

15 Q. Okay. Back to the -- we were talking about your letter,
16 the November 27th letter -- I forgot which exhibit it was.

17 So you were pretty adamant in this and we were talking
18 about the letters of credit. Right here. So, how do you --
19 when you have to -- when you are responsible in any projects for
20 letters of credit, how do you obtain letters of credit?

21 A. So letters of credit, first off, before I could do one, I
22 would have to go back to M.H.I. in Japan and ask is it okay to
23 get one, because it ties up some of the company's money, so you
24 go to the treasurer, you would ask for that. So it's something
25 I couldn't do without permission. So we would go to our parent

1 and we would ask for a letter of credit, and if they would give
2 you one, then you'd have to go ahead and pay for it and spend
3 money to get it.

4 Q. Not your money.

5 A. Excuse me?

6 Q. Not your money.

7 A. The company's money, yes.

8 Q. Okay. And \$20 million in a letter of credit would cost
9 about how much?

10 A. As much as much as a million dollars a year, that
11 magnitude.

12 Q. Okay. So for 20, if you wanted to buy letters of a credit
13 valued at \$20 million, it might cost a million dollars?

14 A. Yes.

15 Q. Okay. And you know that, also, because you were prepared
16 if you got the long term service agreement to submit letters of
17 credit to C.F.E., correct?

18 A. Correct.

19 Q. But not for the prime contract for the equipment?

20 A. Correct, because we were not in contract with the prime.
21 So we were not with C.F.E. We didn't have a contract with them.

22 Q. Okay. In the middle of that paragraph, you're talking
23 about the long term service agreement and Mitsubishi Heavy
24 Industries in Japan. What is this about? Does this have
25 anything to do, first of all, with the prime equipment

1 agreement?

2 A. It does not from our perspective.

3 Q. Okay. So this was discussed with you and addressed: In
4 our long term service agreement proposal in which we propose to
5 provide assurance through a parent guarantee for Mitsubishi
6 Heavy Industries Japan, explain to the jury what that's about?

7 A. So instead of a letter of credit for the service agreement,
8 we thought it might save ourselves money collectively as a group
9 if in direct contract with C.F.E., if we could get our parent
10 Mitsubishi Heavy, to put a guarantee out that they would
11 guarantee this project. So they would -- they put out a
12 parental guarantee and that assures that they would backstop
13 this project for us if anything would happen and it saves
14 monies. It's done fairly frequently to save money.

15 Q. What's a parental guarantee?

16 A. A parental guarantee is your subsidiary Mitsubishi Heavy
17 Industries, the big Japanese Heavy Industries, and they would
18 put a company guarantee out that would way that they would step
19 in and do what needs to be done to fulfill this contract should
20 we fail. So that was what the guarantee does is that instead of
21 allowing the buyer to go ahead and collect your money from the
22 bank, it really obligated our parent to fulfill what was needed
23 under the contract.

24 Q. Does the guarantee require a separate contract?

25 A. A parental guarantee?

1 Q. Yes.

2 A. You wouldn't -- it doesn't necessarily require a separate
3 contract.

4 Q. It would have to be in writing?

5 A. It would have to have a written guarantee, yes.

6 Q. Okay. In some document?

7 A. In some form, an attachment or something from our parent,
8 yes.

9 Q. So is that because Mitsubishi or M.H.I. is just so wealthy?
10 They're worth a lot of money.

11 A. No, I don't think so.

12 Q. Why is a parent guarantee better than a Mitsubishi Power
13 Systems America's guarantee?

14 A. Well, they were a bigger company and they did have more
15 assets than Mitsubishi Power Systems, so it would, also, being
16 the parent, would obligate them to put their money in or their
17 fulfillment obligation as well.

18 Q. Okay. So you were willing to do that on the L.T.S.A.?

19 A. Yes, because we were in -- yes, we were.

20 Q. Suppose F.G.G. could not provide the \$20-million letter of
21 credit on the prime contract and came to you and said they
22 couldn't do it, what would you have done?

23 A. I don't know. I have -- I don't have a good answer for
24 that, because we certainly didn't have a contract with C.F.E.
25 We would not have provided that for them.

1 Q. Would you have pledged Mitsubishi's three turbines?

2 A. Absolutely not.

3 Q. Why?

4 A. We have no way of assuring that we would get paid, so
5 unless we had this surety of payment and a contract direct with
6 C.F.E., we would never pledge our equipment to someone else. We
7 would not do that.

8 Q. Did you ever agree to pledge the Mitsubishi equipment?

9 A. No. I would have been fired had I done that.

10 Q. Did you have the authority to pledge the Mitsubishi
11 equipment?

12 A. Not at all.

13 Q. What would it have taken to actually get the authority to
14 pledge the Mitsubishi equipment?

15 A. We would have had to go directly to Japan and had at least
16 the management in Japan sign off that we would have that right
17 to do that.

18 Q. Was -- was there any reason -- okay.

19 So you went to Mexico City twice; is that correct?

20 A. Correct.

21 Q. And the first time, what was the purpose of the meeting?

22 A. First time was just to hear more about the project and to
23 meet some of the people that we could meet in C.F.E.

24 Q. And who did you meet?

25 A. I can't really recall. I really don't remember. I

1 remember we had a dinner, a dinner out, but I don't recall the
2 peoples' names actually.

3 Q. Did you go to one of the C.F.E. buildings?

4 A. I believe we went to one of the C.F.E. buildings and then
5 we had dinner.

6 Q. Who was with you from Mitsubishi?

7 A. I think it was Hector, but I can't quite recall.

8 Q. Did you walk to the C.F.E. building?

9 A. Yes. In one of the meetings we did, correct.

10 Q. And did Mr. Delgado ever approach you about the letters of
11 credit when you were walking to the C.F.E. building?

12 A. Not that I recall.

13 Q. Okay. The second time that you went to Mexico, did he
14 approach you about letters of credit that you recall?

15 A. I don't recall, no.

16 Q. You don't remember?

17 A. No.

18 Q. If he had asked you if you could pledge the equipment in
19 lieu of the \$20-million letter of credit, what would you have
20 said?

21 A. It's impossible. I have no authority to do so and
22 couldn't.

23 Q. Okay. And again you couldn't identify Mr. Delgado today?

24 A. Well, I think he's here. He looks different, but I think
25 he -- he may be here, but yeah. He doesn't look like the same

1 person.

2 Q. Okay. With regard back to your letter, you also talk about
3 an incentive. We offered an incentive. What is this about?

4 A. So this was with regard to the L.T.S.A. that we could
5 conceivably drop the price somehow, whether it be the equipment
6 price or the L.T.S.A. price, if we didn't have to post that
7 letter of credit for the L.T.S.A., so we were very specific for
8 that. If we would get a parental guarantee it saved us a
9 million dollars.

10 Q. Do you remember what the original price of the equipment
11 was to F.G.G.?

12 A. 121 million.

13 Q. No, to F.G.G.

14 A. To F.G.G.? I believe it was 1-0-6-6, but I believe that
15 was the number.

16 Q. At some point in time did that drop to 103 million?

17 A. It was pushed to that point, yes.

18 Q. And then to 102 million?

19 A. That was the push.

20 Q. So this incentive has -- really has to do with long term
21 service?

22 A. The \$1-million drop from 103 to 102 I believe was with
23 regard to not having to supply an L.T.S.A. -- or with the
24 L.T.S.A. and not having to supply any kind of L.O.C. We would
25 give a parent guarantee instead.

1 Q. So in this letter you are telling what your concerns are
2 that have quickly developed. What's your second example?

3 A. In this one it was duties paid. We had no money and to pay
4 for duties or taxes, so we thought again we didn't have any
5 ability to do could that.

6 Q. You were concerned that they might try to include that?

7 A. Yes.

8 Q. And third example?

9 A. That they were changing potentially the terms of the
10 service agreement, so the service agreement had its own specific
11 payment terms, and we were worried that that wasn't being again
12 reflected as it should be.

13 Q. Okay. It says, a third example is the apparent change in
14 the rates of payment which F.G.G. finally proposed to C.F.E.;
15 and this is the L.T.S.A. or this is the prime contract?

16 A. This is the L.T.S.A. specifically.

17 Q. Okay. And then you said there may be additional concerns
18 about delivery dates?

19 A. You know, we had specific dates in the contract and we
20 wanted to make sure that we'd matched what we offered in our
21 proposal; we're going to deliver this project on such and such a
22 date. We wanted to make sure they didn't change that.

23 Q. In the next paragraph does that basically -- is that what
24 you're talking about, that you really just -- you didn't have a
25 copy and you didn't know what they offered?

1 A. Exactly. We had no idea if it matched what we had offered.

2 Q. And because you didn't know, you never got to see their
3 proposal, you didn't even know what other issues may exist.

4 A. Correct.

5 Q. But regardless of that were you willing to go ahead?

6 A. Yes. We were, if we could verify again that we were
7 offering the equipment as we had offered it, if it was -- as
8 long as our offer to F.G.G. was our offer and as long as that
9 was unchanged, we were willing to go ahead, provided they could
10 eventually show us that everything matched.

11 Q. Okay. And was this letter sent electronically?

12 A. I believe this was e-mailed, yes.

13 Q. Did you receive a response to Government's Exhibit
14 Number 11?

15 A. I think so, but again I don't have the documents in front
16 of me.

17 Q. So you never saw their proposal?

18 A. Never did, no.

19 Q. Okay. Did you then enter into a subcontract?

20 A. Mitsubishi did enter into a subcontract with F.G.G., yes.

21 Q. Okay. And I'm going to first pull up the Spanish.

22 Did you participate in drafting this subcontract?

23 A. I did not.

24 Q. Why is it in Spanish? Do you know?

25 A. I actually -- we had big problems with that. I do not

1 know.

2 Q. What do you mean you had big problems?

3 A. Well, we -- you know our language for working with F.G.G.
4 was English, so when it came through in Spanish, it was a
5 surprise.

6 Q. What did you do when you saw it in Spanish? Did you
7 complain or...

8 A. We complained and then we translated it.

9 Q. Okay. Who translated it? Do you know?

10 A. I don't recall.

11 Q. Hector Ponce speaks fluent Spanish.

12 A. Yeah, yeah, uh-huh.

13 Q. But it was executed -- the original was executed in
14 Spanish, correct?

15 A. I believe it was, yes.

16 Q. And I'm going to scroll down to the bottom of Government's
17 Exhibit Number 12. And look at the signature. You said you
18 didn't have anything to do with generating the subcontract?

19 A. Did not.

20 Q. Well, do you speak Spanish?

21 A. Very little.

22 Q. Not well enough to generate?

23 A. Not well enough to write anything in Spanish.

24 Q. And signator for Mitsubishi Power Systems was who?

25 A. It was -- I believe it was Greg Wunder, who was in the

1 sales department.

2 Q. Okay. And do you know anything about -- do you know
3 where -- this looks like it was signed in person.

4 A. I believe Greg signed it in person, but I believe there was
5 a letter or a handwritten piece behind it that he had that he
6 put in specifically to make sure that with the signed
7 subcontract that it would be adjusted to make it match the
8 proposal that we had.

9 Q. So I have in front of you -- do you recognize that as
10 Mr. Wunder's scrawl?

11 A. It looks like it, yes.

12 Q. And did you know about this at the time that he put it in
13 or did you learn about it after it had been signed?

14 A. He had called me afterwards and said, look, I needed to
15 sign this, but I wrote a very specific handwritten piece at the
16 end of it that allowed us to make adjustments to the subcontract
17 to make sure it is in accordance with what we offered, and he
18 had then -- he signed that, as did Fernando at the same time.

19 So this -- you know, we believed or he believed and
20 referred to me that we had this ability to make the adjustments
21 to make it match, that it was just a formality to sign it, but
22 we would then match up the contracts in accordance to what our
23 proposal was.

24 Q. So this little handwritten part was still as a result of
25 the fact that you had never seen what they gave C.F.E.?

1 A. Correct, uh-huh.

2 Q. Okay. And when did you -- did you even read the
3 subcontract before it was signed?

4 A. No. We were given it and signed it, but then he used this
5 letter in the end to go ahead and to cover us was the intent.

6 Q. Okay. Did you become familiar with the payment schedule?

7 A. Eventually, yes, uh-huh.

8 Q. Okay. So I'm displaying to you Government's Exhibit
9 Number 19, a Spanish document. And do you know what these are?
10 It says anexo. Do you know what an anexo is?

11 A. An attachment.

12 Q. Do you have any input into the anexo?

13 A. No.

14 Q. I'm going to scroll down. Can you tell me if you -- have
15 you ever seen this document before?

16 A. I have recently, yes.

17 Q. Okay. Any of the initials -- the date of this is the 6th
18 of January of 2010, correct?

19 A. Correct.

20 Q. And I'm showing you the first page with initials. Are any
21 of those yours?

22 A. No.

23 Q. Are any of them Hector Ponce?

24 A. Not that I know of, no.

25 Q. Were you present when this contract was signed?

- 1 A. No.
- 2 Q. Do you know where it was signed?
- 3 A. No, I do not.
- 4 Q. Okay. I'm just going to try to scroll down very slowly and
- 5 ask you, next page, are any of those your initials?
- 6 A. Not at all.
- 7 Q. Are any of them Hector Ponce's initials?
- 8 A. Not that I know of, no.
- 9 Q. And the next page?
- 10 A. No.
- 11 Q. The next page?
- 12 A. No.
- 13 Q. The next page?
- 14 A. No, not at all.
- 15 Q. The next page?
- 16 A. No.
- 17 Q. Next page?
- 18 A. No.
- 19 Q. Next page?
- 20 A. Not at you all, no.
- 21 Q. Same?
- 22 A. Same.
- 23 Q. Page 11 now?
- 24 A. Not at all. I have a very specific initial.
- 25 Q. Page 12?

1 A. Not at all.

2 Q. Page 13?

3 A. No.

4 Q. Getting there. That's page 13. I'm not going to go
5 through every page. You weren't present during the signing of
6 this contract?

7 A. I was not, no.

8 Q. Did you put your initials on this contract?

9 A. Not at all.

10 Q. Okay. Or it's an anexo and I understand it's not a
11 contract, but I am looking for the prime contract.

12 I showed you the teaming agreement. Do you recall
13 whether or not your initials were on the teaming agreement?

14 A. I do not believe they were.

15 Q. Do you ever remember initialing any -- every page of any
16 document in this case?

17 A. No.

18 Q. With regard to Government's Exhibit Number 13, who is Ueki?

19 A. Ueki was one of the vice presidents in the commercial
20 department that the proposals would be signed off through.

21 Q. And Government's Exhibit Number 13, is that an e-mail on
22 which you are copied that is from Marco Delgado? Look at the
23 signature.

24 A. Yes, it was, uh-huh. Yes.

25 MS. KANOF: Move Government's Exhibit Number 13 into

1 evidence, Your Honor.

2 MS. FRANCO: No, objection.

3 THE COURT: GX-13 is admitted.

4 BY MS. KANOF:

5 Q. The starting with the e-mail chain at the very bottom, is
6 that an e-mail from Mr. Ueki?

7 A. Yes, uh-huh.

8 Q. Okay. And that's to who?

9 A. It was to Hector Ponce.

10 Q. And go ahead and read it.

11 A. Thank you very much for your support on this project. As I
12 mentioned before, Hasegawa-san will be back in the office
13 December 28th. Could I expect to receive some parts of the
14 English version of the prime agreement by them?

15 Q. Okay. So Mr. Ueki, does he speak English?

16 A. Yes.

17 Q. Does he speak Spanish?

18 A. Uh, I don't believe so.

19 Q. Mr. Ponce, does he speak Japanese?

20 A. Yes.

21 Q. Because he's referred to Ponce-san, so...

22 A. Yes.

23 Q. And so the next e-mail in this chain, if you'll note
24 Christmas Eve, December 24th of 2009, and it appears to be from
25 Hector Ponce to Marco Delgado, correct?

1 A. Correct, uh-huh.

2 Q. And what is Mr. Ponce telling Mr. Delgado?

3 A. He needs a copy of the prime agreement and the payment and
4 the critical dates, annexes by today. He has to put a summary
5 together for Monday morning for a request for Mr. Ueki and
6 Mr. Hasegawa.

7 Q. Okay. Who is Mr. Hasegawa?

8 A. Hasegawa-san was the President.

9 Q. Of Mitsubishi Power Systems Americas?

10 A. Mitsubishi Power Systems Americas, yes.

11 Q. Here in the United States?

12 A. Yes, uh-huh.

13 Q. And how does an e-mail have you come to know is Mr. Delgado
14 [sic]?

15 A. (Nodding head affirmatively.)

16 Q. Is that is yes or a no?

17 A. Yes, uh-huh.

18 Q. Okay. And how does he respond?

19 A. He was in a hurry. They were verifying, so he was in a
20 hurry to fly back. He will call. And then he responds back
21 that he needs, you know, verification of the equipment and so he
22 ignored the request.

23 Q. That was my question. Does he even address the fact that
24 the President and Vice President of Mitsubishi Power Systems
25 Americas would like a copy of the prime agreement and payment

1 and critical dates?

2 A. He totally ignored it.

3 Q. Instead what does he talk about?

4 A. Providing certification and verification of where the
5 equipment is.

6 Q. Okay. You've been in this business how long?

7 A. 36 years.

8 Q. Why would someone request a certification of the existence
9 and their location after a contract has just been signed?

10 A. It's a good question. I have no idea.

11 Q. Ever seen that before?

12 A. I have not, other than to go inspect it, maybe, but I have
13 no idea, yeah.

14 Q. Had there been a request for inspection yet at this time?

15 A. Not that I recall.

16 Q. Okay. Let me show you Government's Exhibit Number 14?

17 A. Uh-huh.

18 Q. I have to show the exhibit number first, so you can verify.
19 Is this Government's Exhibit 14?

20 A. Yes, it is. Uh-huh.

21 Q. And do you recognize that it's an e-mail to you from Hector
22 Ponce, copied to Mr. Delgado?

23 A. Yes, to me, and yes. Uh-huh.

24 MS. KANOF: Government moves to admit Government's
25 Exhibit Number 14.

1 THE COURT: Ms. Franco?

2 MS. FRANCO: No, objection.

3 THE COURT: GX-14 is admitted.

4 BY MS. KANOF:

5 Q. Okay. Mr. Ponce is now -- this is four days later.

6 Initially Mr. Ponce writes to Mr. Gireud, what?

7 A. Let me just read it again and remind myself.

8 Oh, again, he's asking, please give us the
9 documentation. The failure -- it's a significant concern that
10 we haven't gotten the requested documentation, well, the
11 contract.

12 Q. Okay. And there's a letter that's attached to this. Is
13 that correct?

14 A. Yes.

15 Q. And the letter is forwarded from Hector to both Mr. Gireud
16 and to Mr. Delgado, correct?

17 A. Correct.

18 Q. Okay. Now, with regard to the letter, what is the date?

19 A. December 28th, 2009.

20 Q. And is the letter from you?

21 A. Yes, it is.

22 Q. Do you recall writing this letter?

23 A. Yes, I do.

24 Q. And why did you write this letter?

25 A. We were very concerned. Again, we were not getting any

1 confirmation of the contracts. We were not getting any
2 information. We were not getting good communication. And we
3 were very worried that -- where this contract was headed, that
4 it was, you know, we were not working together per the teaming
5 agreement.

6 Q. So on the 24th on Christmas Eve, there's an e-mail wanting
7 to know the location of the equipment, correct?

8 A. Correct.

9 Q. And four days later, there's this letter from you, correct?

10 A. Correct.

11 Q. And the letter begins about you being very concerned for
12 failure of Mitsubishi providing information, correct?

13 A. Correct.

14 Q. And then what are you specifically suspicious about?

15 A. That they were in such a quick hurry to go look at this
16 equipment and why would they want to do that, what was -- what
17 were they trying to do over the holiday, why -- what was the
18 reason all of a sudden that they needed to go do that.

19 Q. And also you addressed, in that first paragraph, the
20 failure to provide the prime contract documentation?

21 A. Correct.

22 Q. So let's talk about the inspections first. When our --
23 when is equipment usually inspected?

24 A. Usually right before it ships. That's the typical time for
25 it.

1 Q. Was this right before it was going to ship?

2 A. No. This was six months before it was going to ship.

3 Q. And who usually inspects it?

4 A. Usually, you would have an engineering firm go out and look
5 at it in detail and get a good look to make sure that it is in
6 accordance to what it's supposed to be.

7 Q. Okay. Would it be inspected before -- this is gray market
8 equipment, correct?

9 A. Correct.

10 Q. And does gray market equipment have to be refurbished
11 before it was shipped?

12 A. Yes, that's why it took some period of time before we
13 shipped it there. As part of our contract, we wanted to make
14 sure that we had to give a warranty. By giving a warranty, all
15 of the equipment stored was still in workable condition.

16 Q. With regard to the -- this inspection, would they want to
17 inspect it after it's been refurbished or before it's been
18 refurbished?

19 A. Certainly after would make more sense.

20 Q. And of course refurbishing had not begun?

21 A. Not begun, no.

22 Q. Okay. What are you especially concerned about?

23 A. About them going ahead and continuing to negotiate and not
24 coordinating with us what was going on and not -- negotiating
25 beyond what we had offered in our proposal without our consent

1 or agreement.

2 Q. Are you referencing that this is an ongoing problem, that
3 it occurred during the bid process as well?

4 A. Yes. Again, we were specifically hoping and expected to
5 see that proposal. We didn't and we were worried that they were
6 continuing to do discussions and negotiations outside of the
7 teaming agreement and proposal.

8 Q. So as a result, are you asking for them to give you certain
9 documents?

10 A. Yes, uh-huh. We requested documents from before.

11 Q. Okay. So let's look at number one.

12 A. Yeah, the -- we -- at that point, when they very much
13 jumped out and said, hey, we need to go see your equipment at an
14 odd time, it triggered us to think, well, what could be going on
15 here. And that was the first time that we had considered that,
16 you know, they might be trying to put equipment that they didn't
17 own up as collateral and that's what we were starting to get
18 suspicious about at that time.

19 Q. Who is we?

20 A. Me and M.P.S.A. team; Hector, myself and the other
21 commercial people.

22 Q. Okay. And why were you -- you were suspecting what?

23 A. Well, we were asking -- you know, there were questions back
24 and forth on the prime contract and letters of credit. There
25 was allusions that they were supposed to bring whatever

1 financing and letters of credit were required. They were not
2 able to show us their prime documents. They were trying to get
3 the letters of credit. And then all of a sudden out of the
4 blue, we get this, hey, let's go look at equipment request, and
5 it made us wonder, well, why would you do that now. So it kind
6 of triggered some suspicion.

7 Q. The next sentence -- okay. So the next sentence is this is
8 unacceptable to M.P.S.A.?

9 A. Yeah. It's again, as a company, we were not going to give
10 our equipment as collateral. We were not going to ship our
11 equipment. We were not going to give anybody any rights to that
12 equipment, not until it was paid for.

13 Q. Therefore, please confirm that Mitsubishi's equipment is
14 not being negotiated or offered to anyone as collateral,
15 correct?

16 A. Correct.

17 Q. Okay. So I want to go back to the top, to the e-mail.

18 A. Uh-huh.

19 Q. And Mr. Ponce is sending this to who?

20 A. To Fernando and copying me as well and copying Marco and
21 then all of the Japanese management as well.

22 Q. Did you get an e-mail after you sent this to Mr. Gireud or
23 for Fernando saying, what do you mean, you promised we could
24 pledge you the equipment?

25 A. Did not.

1 Q. Did you ever get any kind of communication arguing with you
2 that when you were in Mexico you promised to pledge the
3 equipment?

4 A. I did not.

5 Q. And number two: Related to the above, what are you telling
6 them?

7 A. It's their responsibility to provide those letters of a
8 credit for the prime equipment, for the equipment prime
9 contract. We were not going to do that.

10 Q. And what are you requesting? Please provide?

11 A. Show us a copy of that, so you can show that you've done
12 it.

13 Q. I'm looking for my pointer. I can't find it.

14 Please provide a copy of the equipment letter.

15 L.O.C., does that stand for letters of credit?

16 A. Letters of credit, yes.

17 Q. As evidenced that this arrangement has been made without
18 liens or restrictions on Mitsubishi's equipment?

19 A. Correct.

20 Q. So let me ask you, are you saying, well, what we're really
21 just concerned about is that title does not change to our
22 turbines. It's okay to pledge it, just as long as title doesn't
23 change?

24 A. No. No, we were not going to allow any -- for that
25 equipment to be used as collateral in any way. We -- you know,

1 it's not our contract. We had no obligation and we had no
2 intent and we weren't going to do it.

3 Q. And you were selling it for \$106 million?

4 A. Yes.

5 Q. Would you ever pledge \$106 million for \$20-million
6 valued --

7 A. Absolutely not.

8 Q. Does that even make good business sense?

9 A. Doesn't make sense. It's not something we would be allowed
10 to do and we would never do it.

11 Q. In your own personal business life, would that make any
12 kind of sense?

13 A. Doesn't make any sense.

14 Q. Okay. And then number three -- oh, here it is -- finally
15 provide what?

16 A. A complete copy of the prime contract, again, for
17 finalization of our equipment supply contract, so that we could
18 make sure that it matched up.

19 Q. Okay.

20 MS. KANOF: I'm sorry, Your Honor. I can't get the
21 mouse to work.

22 THE COURT: It's because it's 6 o'clock.

23 MS. KANOF: The mouse tells better time than I do.

24 THE COURT: Let's go ahead -- can we break here or do
25 you want --

1 MS. KANOF: Yes, absolutely.

2 THE COURT: All right.

3 Ladies and gentlemen of the jury, we'll recess for the
4 evening. Please remember the instructions I gave you yesterday
5 about not discussing the case with any of your family members or
6 friends or even amongst yourselves. And with that, we'll see
7 you tomorrow morning at 9 o'clock. We're in recess till
8 tomorrow at 9 o'clock.

9 COURTROOM SECURITY OFFICER HEIDTMAN: All rise.

10 (Jury recessed.)

11 THE COURT: Mr. Adams, if you would be back at 9:00
12 tomorrow morning please.

13 THE WITNESS: Yes, sir.

14 THE COURT: Thank you, sir. We're in recess until
15 then.

16 (Proceedings conclude for the evening.)

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1 I certify that the foregoing is a correct transcript
2 from the record of proceedings in the above-entitled matter. I
3 further certify that the transcript fees and format comply with
4 those prescribed by the Court and the Judicial Conference of the
5 United States.

6 Signature: /S/KATHLEEN A. SUPNET
7 Kathleen A. Supnet, CSR

December 31, 2018
Date

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KATHLEEN A. SUPNET, CSR